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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 146.

MILTON HUMES, ASSIGNEE OF JOHN W. SCRUGGS, A BANKRUPT, APPELLANT,

vs.

NARCISSA SCRUGGS AND JAMES ROBINSON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED OCTOBER 15, 1874.

Dec 23 1874
Dismissed
for want

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1 To the Hon. Richard Busteed, judge of the district court of the United States for the northern district of Alabama, sitting in equity.

Milton Humes, a citizen of the State of Alabama, residing in the city of Huntsville, within said northern district, as assignee in bankruptcy of the estate of John W. Scruggs, bankrupt, brings this his bill of complaint against the said John W. Scruggs and his wife, Narcissa Scruggs, and James Robinson, all of whom reside in the county of Madison and State of Alabama.

And thereupon your orator complains and says:

1. That heretofore, to wit, on the 30th day of June, 1868, the said John W. Scruggs, who was then, and had been for more than six months immediately preceding, a resident citizen of said county of Madison, within said northern district, filed in the office of the clerk of this court his petition, praying to be adjudged a bankrupt, within the purview of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2,
2 1867; that on said petitions such proceedings were had as required by said act; that on the 3rd day of June, 1868, the said John W. Scruggs was duly adjudged a bankrupt; that on the 13th day of August, 1868, one Charles A. Donegan was duly appointed assignee in bankruptcy of the estate of said John W. Scruggs, bankrupt; that on the 4th day of September, 1868, an assignment of all the estate real and personal of said bankrupt was made to the said Charles A. Donegan by Joseph W. Burke, a register in bankruptcy of this court, there being no opposing interest, and said petition having been referred to said register; that the said Charles A. Donegan departed this life on the 29th day of May, 1870, without having administered the assets of said estate, without having obtained possession of the property now herein sued for, or instituted legal proceedings for the recovery of the same, and without having made any disposition of his right to said property or the recovery thereof, by sale or otherwise; and that your orator is now the successor of said Charles A. Donegan, as assignee in bankruptcy of the estate of said bankrupt, having been appointed to fill the va-
3 cancy in the office of such assignee occasioned by the death of said Charles A. Donegan, and a conveyance or assignment of all the property real and personal of said estate not disposed of by said deceased assignee having been made to your orator by said Joseph W. Burke, register in charge of the case, on the 4th day of June, 1870; and that on the 26th day of July, 1870, the clerk of this court having been notified of the vacancy in the office of such assignee, and the judge of this court being then absent, referred the matter to said Joseph W. Burke, register in charge of the case, and said Joseph W. Burke, register, being then absent from the country, Thomas C. Fullerton, another register in bankruptcy of this court, acting for said Joseph W. Burke, on the said 26th day of July, 1870, appointed your orator assignee in bankruptcy of the estate of said bankrupt, and made a conveyance or assignment of all the property real and personal of said estate not legally disposed of by said deceased assignee to your orator.

4 2. That on the 14th day of May, 1866, the said John W. Scruggs was indebted to James Robinson, as follows, viz: in the sums of four thousand three hundred and forty-eight dollars and ninety-six cents, and two thousand and forty-five dollars and ninety-seven cents, due by two several promissory notes, one for each of said sums, made by said John W. Scruggs and one James H. Scruggs on the 14th day of April, 1862, pa y

able to said Robinson on the 19th day of January, 1863; in the further sum of two thousand three hundred and ninety-nine dollars and fifty-seven cents, due on a bond executed by said John W. Scruggs, said James H. Scruggs, and one Benjamin Patterson on the 9th day of January, 1863, bearing that date, and payable to said Robinson, fifteen days after date; in the further sum of thirteen hundred and thirty-three dollars and eighty-six cents, due by a promissory note made by said John W. Scruggs, George Cox & Co., George W. Drake, and said James H. Scruggs on the 18th day of February, 1862, bearing that date, and payable one year after date to said Robinson; and in the further sum of three thousand four hundred and thirty-two dollars and fifty-
5 eight cents, due on a foreign bill of exchange, drawn at Courtland, in the State of Alabama, by John A. Gilchrist, on the 21st day of February, 1860, upon Scruggs, Donegan & Co., at New Orleans, in the State of Louisiana, for the payment of thirty-two hundred and sixty-nine dollars and thirteen cents, eleven months after date, to George W. Garth, by whom said bill was endorsed to said John W. Scruggs, by whom it was endorsed to said Robinson, which bill, not being paid at maturity, was duly protested, of which said John W. Scruggs had due notice, with interest on said several sums less partial payments made thereon, amounting to less than the interest due; and that on the said 14th day of May, 1866, the said John W. Scruggs was indebted to Septimus D. Cabaniss, executor of the will of Samuel Townsend, deceased, in the sum of three thousand four hundred and thirty-five dollars, with interest from December 3, 1861, due by bond of that date; to Jesse W. Garth in the sum of forty-nine hundred dollars, with interest from February 25, 1862; to George W. Neal in the sum of ten thousand dollars;
to George P. Beirne, administrator of the estate of Charles H.
6 Patton, deceased, in the sum of fifty thousand dollars; to the Northern Bank of Alabama, a corporation created by an act of the legislature of the State of Alabama, in the sum of one hundred thousand dollars; and to other persons in large sums, amounting in the aggregate to over three hundred thousand dollars.

7 3. That on the said 14th day of May, 1866, the said John W. Scruggs was seized and possessed of a tract of land adjoining the city of Huntsville, in the county of Madison, and State of Alabama, whereon he then resided and now resides, containing about sixty acres, being a part of the southwest quarter of section thirty-five, township three, range one west, and being the tract of land purchased by said John W. Scruggs of Samuel Ragland in the year 1850, except fifty-two acres thereof sold by the said John W. Scruggs to James H. Scruggs, Joseph Martin, and Samuel S. Clark; and was at the same time possessed of the following personal property, being the household and kitchen furniture in the residence and on the premises aforesaid, viz: 2 sofas, 2 rocking-chairs, 6 hair-bottom chairs, 1 center table, 1 mantle clock, 1 dining-table, 1 sideboard, 1 doz. dining-room chairs, 2 wardrobes, 2 bedsteads & beds, 3 mattrasses, 2 bureaux, 3 lounges, 1 hat-rack, 6 pairs of blankets, and 3 carpets, and was entitled to one-third interest in the profits of a hotel in the town of Corinth, in the State of Mississippi, for a term of five years from August 22, 1865.

8 4. That on the said 14th day of May, 1866, the said John W. Scruggs, being thus indebted, seized, and possessed of said land possessed of said personal property, and entitled to said one-third of the profits of said hotel for said term of five years from August 22, 1865, with the intent to hinder, delay, and defraud his creditors, conveyed said property to his wife, the said Narcissa Scruggs, by his deed of that

date, of which a copy, marked "Exhibit A," is herewith appended as a part of this bill.

That said deed of John W. Scruggs to his wife, the said Narcissa Scruggs, dated May 14, 1860, was contrary to and prohibited by the laws of the State of Alabama, and is null and void. That the property conveyed by said John W. Scruggs to his wife, Narcissa Scruggs, by his said deed of date May 14, 1866, was worth fifty thousand dollars. That the land conveyed by said John W. Scruggs to his said wife by his said deed of date May 14, 1866, was purchased by him for his own use, paid for with his own money, and title thereof taken in his own name; and that he has made permanent improvements thereon with his own means to the value of twenty-five thousand dollars.

9 5. That on the said 14th day of May, 1866, the said John W. Scruggs was insolvent, and conveyed all the property he then had to his said wife by his said deed of that date.

6. That the consideration recited in said deed of conveyance from said John W. Scruggs to his said wife, Narcissa Scruggs, of date May 14, 1866, was simulated and false; and that said deed was executed without any consideration valid in law. That said debts hereinbefore recited as existing against the said John W. Scruggs, except the said debts due to said James Robinson on the 14th day of May, 1866, have been duly proved against his estate in bankruptcy, and cannot be satisfied without subjecting to the payment thereof the property embraced in said deed of date May 14, 1866.

7. That the said James Robinson, on the 13th day of December, 1867, filed his bill in the chancery court for the fifth district of the northern division of the State of Alabama against the said John W. Scruggs, his wife, the said Narcissa Scruggs, and others, alleging the indebtedness of the said John W. Scruggs to him as herein stated; and that

10 said deed from said John W. Scruggs to his said wife, of date May 14, 1866, was executed by the said John W. Scruggs with the intent to hinder, delay, and defraud his creditors, and praying that said deed might be set aside and declared null and void, and the property therein embraced subjected to the payment of his said debt; and since the bankruptcy of the said John W. Scruggs, to wit, on the 3rd day of August, 1870, filed in said chancery court his supplemental bill against your orator and the defendants to his said original bill, praying for the same relief against your orator as he would have been entitled to against the said John W. Scruggs had he not become bankrupt; whereby, as your orator is advised, said Robinson acquired a lien on said property for the payment of his said debt against said John W. Scruggs.

8. That the said John W. Scruggs and his wife, the said Narcissa Scruggs, were married in the State of Alabama in December, 1843, where they have resided ever since, without any contract or mar-

11 riage settlement varying their marital rights from the provisions of the law of the State of Alabama.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer; that is to say—

1. Whether the allegations of the several paragraphs of this bill are

not true; and, if all are not true, which are untrue, and in what particulars untrue.

Your orator prays that said deed of conveyance from said John W. Scruggs to his wife, the said Narcissa Scruggs, of date May 14, 1866, may be set aside and declared null and void; that an account may be taken of what is due said James Robinson on his said debt against John W. Scruggs, and a lien established on said property for the pay-
12 ment thereof, and that the real and personal property embraced in said deed may be decreed to be assets of the estate of said bankrupt, and surrendered to the possession of your orator to be administered and sold, and the proceeds of the sale thereof, after the payment of the lien in favor of said Robinson, distributed pro rata in payment of the debts proved against said estate under said bankrupt act of March 2, 1867.

And your orator prays that he may have generally such other and further relief as the nature of his case requires.

Therefore, will your honor grant unto your orator the writ of subpœna, issuing out of and under the seal of this court, to be directed to the said John W. Scruggs and his wife, the said Narcissa Scruggs, and the said James Robinson, commanding them by a certain day and under a certain penalty therein inserted to appear before your honor in the district court of the United States for the northern district of the State of Alabama, and then and there answer the premises and abide the order and decree of the court.

CABANISS & WARD,
Sols. for Complainant.

13 NOTE.—The defendant John W. Scruggs, the defendant Narcissa Scruggs, and the defendant James Robinson, are each required to answer all the allegations and interrogatories of this bill.

CABANISS & WARD,
Sols. for Complainant.

14 *Copy of deed referred to as marked "Exhibit A."*

THE STATE OF ALABAMA, *Madison County:*

Whereas I, John W. Scruggs, of the county and State aforesaid, in the year 1852, received, as the separate estate of my wife, under the laws of the State of Alabama, the sum of thirty-two hundred dollars; and whereas in the year 1855 I sold property belonging to her, as her separate estate, under the laws of Alabama, for the sum of thirteen hundred dollars; and whereas in the year 1858 I was seized and possessed of a certain tract of land situated in the county of Jackson, in said State, consisting of about eight hundred acres, in which my said wife was dowable; and whereas said lands were afterwards sold by me to one Caswell B. Derrick, to whom I executed my bond to make title on payment of the purchase-money; and whereas my said wife has by written instrument of this date, executed contemporaneously herewith, relinquished to the said Caswell B. Derrick her dower interest in the lands aforesaid; and whereas in the year 1860 I was seized and pos-
sessed of the following lands, situated in the county of Critten-
15 den, in the State of Arkansas, viz, the N. W. $\frac{1}{4}$ of section 17; the southwest $\frac{1}{4}$ of section 8; the southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 18; the southeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 18; the southwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of section 18; the north $\frac{1}{2}$ of the W. $\frac{1}{2}$ of

the northeast ¼ of section 19, and the east half of section 18, all in township , of range , containing about eight hundred and forty acres; and whereas I afterwards sold said lands to one Thomas M. Peters, to whom I executed my bond to make title to said lands on payment of the purchase-money; and whereas my said wife has, by written instrument of this date executed contemporaneously herewith, released to the said Thomas M. Peters her dower interest, she being thereof dowable in the lands last aforesaid; and whereas I have, by deed of even date with this instrument and of contemporaneous execution, conveyed to one Francis A. Landers, of the city of Memphis, in the State of Tennessee, certain real estate of which I am seized and possessed, therein particularly described, to which said deed reference is here made for the
16 purpose of ascertaining its consideration and the amount, character, description, and location of the property thereby conveyed; and whereas my wife joined me in the execution thereof, and thereby relinquished unto the said Francis A. Landers, and to all persons who may claim under him by virtue of any of the stipulations of the deed last aforesaid, her dower interest in the real estate thereby conveyed; and whereas said several relinquishments of dower aforesaid were made by my wife upon my express promise and agreement to convey to her by deed cotemporaneously therewith, to her sole and separate use and as her sole and separate estate, the real estate and other property and interests hereinafter particularly described, in consideration of said several relinquishments of dower aforesaid, and of said several sums of money so received by me as aforesaid, as her separate property:

Now, therefore, in consideration of the premises, and of the promise and agreement aforesaid, and of the several sums of money so received by me as aforesaid, and of the several relinquishments of dower
17 aforesaid, I, John W. Scruggs, do hereby grant, bargain, and sell, alien, enfeoff, and convey unto my said wife, Narcissa Scruggs, to her sole and separate use, and as her sole and separate estate, the following-described real estate adjoining the city of Huntsville, in the county of Madison aforesaid, whereon my residence is situated and including the same, being the tract of land purchased by the said John W. Scruggs of Samuel Ragland in the year 1850, except fifty-two acres thereof sold by the said John W. Scruggs to James H. Scruggs, Joseph Martin, and Samuel S. Clark, and containing about sixty acres, it being the land conveyed by Richard Pryor & wife and John Blevins & wife to John R. H. Acklen, Samuel Breck, and Alexander Erskine by deed of date June 13, 1839, and recorded in deed-book R, page 277, in the office of the probate court of the county of Madison aforesaid, and afterwards, on the 5th of June, 1843, conveyed by deed of that date to William Robinson, as sheriff of said county of Madison, to the said Samuel Ragland, and recorded in deed-book V, page 584, in the office of the probate court aforesaid.

18 Now, I, the said John W. Scruggs, in consideration of the promises and agreement aforesaid and of the several sums of money so received by me as aforesaid, and of the several relinquishments of dower aforesaid, do hereby bargain, sell, and deliver unto the said Narcissa Scruggs the following-described household and kitchen furniture in the residence and on the premises aforesaid, that is to say, two sofas, two rocking-chairs, 7 hair-bottom chairs, 1 center-table, 1 mantle-clock, 1 dining-table, 1 sideboard, 1 doz. dining-room chairs, 2 wardrobes, 2 bedsteads & beds, 3 mattrasses, 2 bureaux, 3 lounges, 1 hat-rack, and 6 pairs of blankets, & 3 carpets.

And the said John W. Scruggs, in further consideration of the prom-

ises and agreement aforesaid, and of the several sums of money so received by me as aforesaid and of the several relinquishments of dower aforesaid, do hereby transfer and assign unto my wife, the said Narcissa Scruggs, my one-third interest in the profits of what is known as the Tishamingo Hotel, in the town of Corinth, in the State of Mississippi, under and by virtue of a contract made and entered into on the 22nd
19 day of August, 1865, between the said John W. Scruggs and one William H. Scruggs for a term of five years, the lot of ground whereon said hotel is built, upon the covenant and understanding of the said William H. Scruggs to build the same, which said contract was on the 1st May, 1866, by written endorsement thereon made, so modified by the said William H. Scruggs as to transfer and assign to the said John W. Scruggs one-third of the profits of the said hotel during the term of his lean aforesaid.

To have and to hold the lands aforesaid and the personal property aforesaid, and all the rights, interests, and profits of the contract of lean aforesaid, with the issues, incidents, and income thereof, to the sole and separate use, and as the sole and separate property of the said Narcissa Scruggs, without marital restrictions, limitations, or incumbrance.

And I, the said John W. Scruggs, hereby release, remit, and surrender unto the said Narcissa Scruggs all his rights, as tenant by the cou'tesy of the real estate aforesaid.

In witness whereof the said John W. Scruggs hereunto sets his hand and affixes his seal at Huntsville, Alabama, this 14th day of May, 1866.

JOHN W. SCRUGGS. [SEAL.]

Stamped according to law.

20 STATE OF ALABAMA,
Madison County:

I, Robert D. Wilson, judge of the probate court of said county & State, hereby certify that John W. Scruggs, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand at Huntsville, Alabama, the 14th day of May, 1866.

R. D. WILSON,
Judge P. C.

Filed August 11, 1870.

LIONEL W. DAY, *Clk.*

21 The President of the United States to the marshal for the northern district of Alabama, greeting:

You are hereby commanded to summon John W. Scruggs & wife, Narcissa Scruggs, & James Robinson, if to be found in your district, that they, laying aside all excuse, appear personally at the office of the clerk of the district court of the northern district of the State of Alabama, in the city of Huntsville, in said district, on the rule-day, to be held on the first Monday in October next, to answer, plead, or demur to the bill of complaint exhibited in said district court by Milton Humes, assignee in bankruptcy of John W. Scruggs, complainant, against John W. Scruggs & wife, Narcissa Scruggs, & James Robinson, defendant, a copy of which bill will be furnished on application to the clerk.

Herein fail not, and have you then and there this precept, with your return thereon endorsed.

Witness the Hon. Richard Busteed, judge of said district court, at Huntsville, in said district, this the 11th day of August, in the year of our Lord one thousand eight hundred and seventy, and of American Independence the ninety-fifth year.

22 { DISTRICT COURT U. S. N. D. OF ALABAMA. } Attest: LIONEL W. DAY, *Clerk of said District Court U. S.*

Issued the 11th day of August, A. D. 1870.

MEM.—The defendants are to enter their appearances and to file their answers or demurrers to said bill in the clerk's office on or before the day on which this writ is returnable; otherwise a decree pro confesso may be entered.

The marshal is required to execute this writ 20 days before the return-day thereof.

Received August 12, 1870.

E. E. DOUGLASS,
U. S. Marshal for the Northern District of Alabama.

Executed August 23, 1870, by service of a copy on James Robinson August 30, on J. W. Scruggs and on Narcissa Scruggs on the 3rd day of September, 1870.

E. E. DOUGLASS,
U. S. M., &c.

I hereby authorize and depute G. W. Dennis to execute copy on Narcissa Scruggs this 3rd day of Sept., 1870.

E. E. DOUGLASS,
U. S. Marshal, &c.

Executed by service of copy on Narcissa Scruggs Sept. the 3rd, 1870.

GEORGE W. DENNIS,
Special Deputy.

23 District court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. SCRUGGS, bankrupt,
v.
JOHN W. SCRUGGS & WIFE, NARCISSA SCRUGGS, and James Robinson.

AT RULES, *Monday, March* 6, 1871.

In this cause, it appearing that subpœnas, requiring the defendants, John W. Scruggs, Narcissa Scruggs, and James Robinson, to appear and plead to answer or demur to the bill of complaint in this cause on 1st Monday in October, 1870, was served on them respectively, as follows: On said James Robinson Aug. 23, 1870; on said John W. Scruggs August 30, 1870; and on said Narcissa Scruggs Sept. 3, 1870, by the U. S. marshal for this district; and said defendants having had an appearance entered for them on the 1st Monday and 3rd day of October, 1870, and all and each of said defendants having failed to plead to answer or demur to the said bill of complaint to the date hereof—

It is now, therefore, on motion of the complainant's solicitors,

24 ordered and decreed that the bill of complaint in this cause be, and it hereby is, in all things taken as confessed against the said John W. Scruggs, Narcissa Scruggs, and James Robinson, defendants aforesaid.

The clerk is requested to grant and enter the foregoing order.
Monday, March 6, 1871.

CABANISS & WARD,
Sols. for Complnt.

Granted and entered.
Monday, March 6, 1871.

LIONEL W. DAY, *Clk.*

25 District court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. SCRUGGS, bankrupt, *v.* JOHN W. SCRUGGS ET ALS. } May 15, 1871.

Come the parties, by attorney, and on motion of the defendants, for good cause shown the court, it is ordered, that the decree pro confesso, taken and entered on the 6th day of March, 1871, against defendants, be vacated and set aside.

26 The separate answer of John W. Scruggs to the bill of complaint filed in the district court of the United States for the northern district of Alabama, by Milton Humes, assignee in bankruptcy, &c., &c., against this respondent & others.

Not confessing or wa'ving any of the insufficiencies or imperfections of said bill, the respondent, for answer thereto, or to so much thereof as he is advised it is material for him to make answer unto, answering says:

1 par. The allegations of the first paragraph of said bill are true, as respondent believes.

2 par. The allegations of the second paragraph of said bill respondent believes to be true. He has not, however, made a computation of his liabilities to the parties named, and there may be some error in the aggregate of said indebtedness, as alleged.

3 par. The allegations of the third paragraph of said bill are true.

4 par. Answering the allegations of the fourth paragraph of said bill, respondent says that, on the 14th day of May, 1866, he did, by his deed of that date, (a copy of which, marked "Exhibit A," is filed with said bill,) convey said property to his wife the said Narcissa Scruggs. He denies that said conveyance was made with intent to hinder, delay, and defraud his creditors, or with any fraudulent intent or purpose whatever. He avers that said conveyance was made, in all respects, in the utmost good faith towards his creditors, and upon the con-
27 siderations and for the reasons recited in the said conveyance. He denies that said deed was contrary to and prohibited by the laws of the State of Alabama, or that it is null and void, as complainant alleges it to be. He denies that said property, at the date of said deed, was worth the sum of fifty thousand dollars. On the contrary, he avers that at that time said property could not have been sold for $20,000.

The land conveyed to his wife, including the sixty acres sold off to Joseph Martin & others, was purchased by this respondent for the sum of thirty-two hundred and fifty dollars, and was conveyed to him individually. This purchase was made in 1850, and the money used in paying for said land was money belonging to the separate estate of respondent's wife, coming to her from the estate of her uncle, William Weakley, deceased, late of Lauderdale County, Alabama, and other monies, which will be proved on the trial.

Respondent admits that he has made valuable improvements thereon, but he denies that the same was at a cost of $25,000, or at a sum exceeding $18,000. He denies that all the money expended by him on said improvements was his money. On the contrary he avers that he used, of monies belonging to his wife's separate estate, under the laws of Alabama, the sum of $4,400. He likewise expended in said improvements the sum of about $2,400, realized from the sale of the said sixty acres to said Martin & others.

28 5 par. Answering the allegations of the fifth paragraph of said bill, respondent says that, as matters have since turned out, he was, on the said 14th May, 1866, insolvent; but he denies that he conveyed to his said wife all the property he then owned. On the contrary, he then owned much other property not embraced in said deed.

6. Par. Answering the allegations of the sixth paragraph of said bill, respondent says it is not true that the consideration recited in said deed was simulated and false, and that said deed was executed without any consideration valid in law. Respondent avers that said deed was executed upon the considerations therein recited, and without simulation or pretense of any kind whatever. The debts, as alleged, have been proved against respondent's estate in bankruptcy, and his assets are wholly insufficient to pay them.

7 par. The allegations of the seventh paragraph of said bill are true; but respondent denies that the said Robinson acquired any lien on said property for the payment of his debts.

29 8 par. The allegations of the 8th paragraph of said bill are true.

Answering the only interrogatory propounded, respondent says:

1. Such of the allegations of the several paragraphs of said bill as are true respondent has admitted, and such as were untrue he has stated, and wherein they are untrue in his several answers to said paragraphs.

And, having fully answered, respondent prays to be hence dismissed with his costs, &c.

WALKER & BRICKELL,
Solicitors for Respondent.

District court of the United States, northern district of Alabama.

Before me, Lionel W. Day, clerk of said district court, personally appeared Jno. W. Scruggs, who makes oath & says that the answer' to the above paragraphs are true to the best of his information, knowledge, & belief.

J. W. SCRUGGS.

Subscribed & sworn to before me this 27th of April, 1871.

LIONEL W. DAY,
Clk. D. C.

Filed April 27, 1871.

LIONEL W. DAY,
Clk. D. C.

30 The separate answer of Narcissa Scruggs to the bill of complaint heretofore filed in the district court of the United States for the northern district of Alabama by Milton Humes, assignee in bankruptcy, &c., against this respondent and others.

Not confessing any of the insufficiencies or imperfections of said bill, this respondent, for answer thereto, or to so much thereof as she is advised it is material for her to make answer unto, answering, says:

1. She believes the allegations of the first paragraph of said bill are true.

2. Respondent has no knowledge of the allegations of the second paragraph of said bill beyond the fact that her husband, the said John W. Scruggs, was indebted, but in what sums, to whom, and how endorsed she does not know, is not informed, and cannot say, and requires proof of these several facts, if material.

3. The allegations of the third paragraph of said bill are true.

31 4. Answering the allegations of the fourth paragraph of said bill, respondent says: That on the 14th day of May, 1866, the said John W. Scruggs did, by his deed of that date, (a copy of which, marked "Exhibit A," is filed with said bill,) convey said property to this respondent. She denies that said conveyance was made with intent to hinder, delay, and defraud the creditors of the said John W. Scruggs, or with any fraudulent intent or purpose whatever. She avers that said conveyance was made by the said John W. Scruggs, and accepted by her, in the utmost good faith, and upon the considerations and for the reasons recited in said conveyance. She denies that said deed was contrary to and prohibited by the laws of Alabama, or that it is null and void. She denies that said property at the date of said deed was worth the sum of $50,000. She insists that it was not then worth exceeding the sum of $20,000, and she does not believe that it could have

32 been sold for that sum. The land so conveyed to this respondent, including the sixty acres before that time sold off to Joseph Martin & others, was purchased by the said John W. Scruggs for the sum of thirty-two hundred and fifty dollars, and he took the deed therefor to himself individually. This purchase was made by the said John W. Scruggs in, respondent thinks, 1850 or 1851, and was purchased for her, & not for the use of the said John W. Scruggs, and the money used in paying for said land was money belonging to the separate estate of respondent, under the laws of Alabama, and respondent believed that said lands had been conveyed to her until years after said purchase. Valuable improvements have been made upon said property, but not at a cost of $25,000; the cost of said improvements did not exceed $18,000.

Respondent denies that all the money expended by the said John W. Scruggs in said improvements was his money. On the contrary, she avers that he used of monies belonging to her separate estate,

33 under the laws of Alabama, the sum of about $4,400. He likewise expended on said improvements about $2,400 realized from a sale of a portion of the said lands to one Samuel S. Clark.

5. Answering the allegations of the fifth paragraph of said bill, respondent says she does not know whether the said John W. Scruggs was insolvent or not on the 14th day of May, 1866. But if he was, respondent did not then know it, nor did she then believe it. She denies that by said deed her said husband conveyed to her all the property he then owned. On the contrary, she is informed & believes, and so states the fact to be, that he then owned much other property not embraced in said deed.

6. Answering the allegations of the sixth paragraph of said bill, respondent says it is not true, as complainant alleges, that the consideration recited in said deed was simulated and false, and that said deed was executed without any consideration valid in law. Respondent states that said deed was executed upon the considerations recited there-
34 in, and without simulation or dissimulation of any kind whatever.

What debts, in what sums, to whom due, or by whom owned, or by whom fined in bankruptcy against the estate of the said John W. Scruggs, respondent does not know, is not advised, and cannot state; and beyond the admissions and denials herein she has no knowledge of any alleged fact in the sixth paragraph of said bill aforesaid.

7. The allegations of the seventh paragraph of said bill are true, but respondent denies that said Robinson acquired any lien on said property for the payment of his said debt.

8. The allegations of the 8th paragraph of said bill are true.

Answering the only interrogatory propounded by the complainant, respondent says such of the allegations of the several paragraphs of said bill as are true respondent has admitted, and such as are untrue she has denied, and such as are partially true and partially false she has so admitted or denied.

35 And this respondent, having fully answered the allegations and interrogatories in said bill contained, now insists upon the following facts in bar of the recovery sought by complainant in his said bill.

That, on the 11th day of November, 1867, she exhibited her original bill of complaint, by her next friend, James H. Scruggs, in the chancery court of the 29th district of the northern chancery divison of the State of Alabama, at Huntsville, against her husband, the said John W. Scruggs, thereby stating her marriage with the said John W. Scruggs, in the year 1843; that her grandfather, Samuel Weakley, of Nashville, Tennessee, died in the year 1835, and that, amongst other property which she inherited from him, was a section of land lying in Panola County, State of Mississippi, and known as section 33, in township 9, & range 8; that in the year 1852 her husband, the said John W. Scruggs, she uniting in the deed at his request, sold the said land for the sum of $2,400, by Armstrong & Rainly, land-agents of said county and State; that her uncle, William Weakley, died intestate in 1853, having neither wife nor child, nor descendants of such, and that she was one of
36 his heirs at law; that, about the year 1854, Samuel D. Weakley, of Lauderdale County, Alabama, the administrator of the estate of the said William Weakley, paid to her husband, the said John W. Scruggs, twenty-seven hundred and fifty dollars, her distributive share of the estate of the said William Weakley; that about the year 1853, she obtained, as a prize in a raffle wherein she had a chance, a fine carriage, which, just after obtaining the same, was sold to one Haywood Jones, of Limestone County, Alabama, for $1,500, which her husband, the said John W. Scruggs, received; that about the year 1854, one George Coxe presented her with the sum of $500, and that said sum, with the other amounts, were placed in the hands of her husband, the said John W. Scruggs, & were used by him in his general business, and blended with his individual assets.

That, in the year 1850, her husband, the said John W. Scruggs, purchased of one Samuel Ragland the tract of land which is particularly described in the bill of complaint of the said Milton Humes.

37 That on the 8th day of January, 18 , her husband, the said

John W. Scruggs, (she uniting in the deed,) sold and conveyed to Joseph Martin, of the city of Huntsville, six $\frac{92}{100}$ acres of said land, for $3,300.

That her husband, said John W. Scruggs, (she joining in the deed at his request,) sold to James H. Scruggs, of said city of Huntsville, another portion of said land for the sum of $7,600.

That her husband, the said John W. Scruggs, (she joining in the deed at his request,) sold another portion of said land to Samuel S. Clark, of Madison County, Alabama, for $1,700; that said original tract of land bought by her husband, the said John W. Scruggs, of the said Ragland, was paid for with the money received by her husband as a part of her distributive share as an heir at law of the estate of William Weakley, deceased, and that the sums of money which her husband, the said John W. Scruggs, received from James H. Scruggs, Joseph Martin, and Samuel S. Clark, as payments for parts and parcels of said original tracts of land, were and are proper parts of her
38 separate estate, being the proceeds of the sale of land purchased and paid for by money which was her separate estate.

That the title of said land so purchased of said Ragland was not taken in her name merely, because her husband, the said John W. Scruggs, was a man of wealth, and in circumstances of great prosperity.

That on the 14th day of May, 1866, at the request of her husband, the said John W. Scruggs, and on an express agreement and stipulation for compensation, she executed a release of her contingent right to dower in lands of which her husband was then, or had been since her intermarriage with him, seized and possessed, and which she owned and possessed a right to dower, in the event she should survive him, viz, to Francis A. Saunders, as trustee, her dower in the following lands: One undivided third interest in the southwest quarter of section sixiteen the north half of section eighteen, the north half of the southeast quarter of section eighteen the southwest quarter of section eighteen, the north half of the northeast quarter of section nineteen, the northwest quarter of section nineteen, the west half of the northeast quarter of section thirty, the northwest quarter of
39 section thirty, the northwest quarter of the southeast quarter of section thirty, all in township three, of range two, east of the fifth principle meridian, in the Batesville land-district, in the State of Arkansas, containing twelve hundred and thirty-one $\frac{90}{100}$; also the north half of section five, the north half of the south half of section five, fraction of section six, and fractional section seven, in the same township and range, containing sixteen hundred and ninety-eight $\frac{75}{100}$ acres; also the west half of section thirty-three, the north half of the northeast quarter of section 36, the southwest quarter of the northeast quarter of section 36, the northwest quarter of section 36, the southeast quarter of the southeast quarter of section 36, the west half of the southeast quarter of section 36, in township four, north of the base-line, & range ten east of the fifth principal meridian, containing seven hundred & twenty acres; also the south half of the southeast quarter of section 18, the half of the northeast quarter of section 19, the south half of section 19, the west half of section 20, the southeast quarter of section 20, in township 3, north of the base-line, in range 2 east of the fifth
40 principal meridian, containing nine hundred and fifty-eight $\frac{28}{100}$ acres; and also the southwest quarter of section 28, the southeast quarter of the northeast quarter of section 36, and the northeast quarter of the southeast quarter of section 36, in township 4, range 2 east aforesaid; the other undivided two-third parts of the above-described

lands were owned at the time by Laurence B. Sheffey and Joseph Martin, they being tenants in common therein with the said John W. Scruggs; and also her dower interest in the one undivided interest in a tract of land in the county of Madison, State of Alabama, adjoining the corporation of the city of Huntsville, on the west side thereof, and bounded on the east by the lands of James G. Scott, and the lands of the estate of Thomas Leonard, deceased, & the lands of Margaret Moore; on the south by the lands of the estate of Adam Hall, deceased; on the west by the lands of J. J. Donegan and the lands of the estate of Adam Hall, deceased; and on the north by the Athens road and the half-acre lot of Z. P. Davis, containing in all forty acres, the other two-thirds being owned by the said L. B. Sheffey & Joseph Martin, as
41 tenents in common with the said John W. Scruggs; and also in the following lands, owned by her hubsand, the said John W. Scruggs, in his own right, in severally, situated in the county of Crittendon, and State of Arkansas, viz: The south half of the northwest fractional quarter of fractional section 13, the north fractional half of section 24, in township seven, north of base-line, range 8 east; the southeast quarter of northeast quarter of section 13, in same township and range, the west half of section 18, the southwest quarter of the northeast quarter, and the west half of the southeast quarter, and the southeast quarter of the southeast quarter of section 18, the north half of section 19, the southeast quarter of the northeast quarter of the southeast quarter of section 18, in the same township & range, being the plantation known as the Island Place, near Marion, in the county of Crittendon, and State of Arkansas, and estimated to contain about fourteen hundred & fifty acres. That on the same day she released he' contingent right to dower in about eight hundred acres of land lying in the county of Jackson, State of Alabama, and sold by her husband,
42 the said John W. Scruggs to, one Caswell B. Derrick. That on the same day she released her contingent right to dower in and to certain lands sold by her husband, the said John W. Scruggs, to Thomas W. Peters, in the year 1860, situated in the county of Crittenden, State of Arkansas, and known as the northwest quarter of section seventeen, the southwest quarter of section eight, the southwest quarter of the southeast quarter of section 18, the southeast quarter of the southeast quarter of section 18, the southwest quarter of the northeast quarter of of section 18, the north half of the west half of the northeast quarter of section 19, and the east half of section 18, containing about eight hundred & forty acres. That in consideration of the monies received by her husband, the said John W. Scruggs, belonging to her separate estate, and for the further consideration of her release of her contingent right to dower in the lands aforesaid, stipulated for at the time of said release, her husband, the said John W. Scruggs, on the 14th day of May, 1866, bargained, sold, & conveyed to her by the deed, a copy of which is made an exhibit to the bill of complaint of the said Milton Humes,
43 the lands and the improvements thereon particularly described in the bill of complaint of the said Milton Humes, and the household and kitchen furniture likewise particularly described and set out in the said bill of complaint of the said Milton Humes. That the said John W. Scruggs also by said deed conveyed to her his one-third interest in the profits of what is known as the Tishiming Hotel, in the town of Corinth, State of Mississippi, under and by virtue of a contract made and entered into on 22nd day of August, 1865, between the said John W. Scruggs and one William H. Scruggs, for a term of five years, the lot of ground whereon *on* said hotel is built, upon the covenant and understanding for

the said William H. Scruggs to build the same; which said contract was so modified by a written endorsement thereon, on the 1st day of May, 1866, as to transfer and assign to the said John W. Scruggs one-third of the profits of said hotel during the term of his lease as aforesaid. That said property embraced in said deed was conveyed to the sole and separate use of this respondent, and as her sole and separate
44 property, without marital restrictions, limitation, or encumbrance, and surrendering to her all the rights of the said John W. Scruggs, as tenant by courtesy, to said real estate. That the consideration moving from her was ample and valuable, and sufficient for the property conveyed to her by the said deed of the said John W. Scruggs. That the land so conveyed was only parts of a larger tract purchased and paid for with money which was her separate estate. That the portions of the same which were sold off to the said Joseph Martin, James H. Scruggs, and Samuel S. Clark, when converted into the money received by her husband, the said John W. Scruggs, for the same, was still also her separate estate; and that the other sums of money so received by her said husband were likewise her separate estate. That the said lands in which she released her contingent right to dower comprised much of the most valuable lands in the State of Arkansas, and that the sum of two hundred thousand dollars is not an extravagant estimate of their real value; and that the property conveyed to her is not a full value for the dower alone, estimating it according to her age and
45 health. By said bill, so exhibited as aforesaid, this respondent prayed the honorable court of chancery to ratify and confirm the said conveyance, and vest the title to the same in her husband, the said John W. Scruggs, as trustee, to have and to hold the same for her sole and separate use, and free from all marital control and incidents; and that such deed or conveyance as may be necessary to effect this purpose may be ordered. A copy of said bill, marked "Exhibit No. 1," is herewith filed as part of this respondent's answer.

On the 11th day of November, 1867, the said John W. Scruggs filed his answer in said honorable chancery court to this respondent's said bill, in which said answer he admitted all the allegations thereof. A copy of said answer, marked "Exhibit No. 2," is herewith filed as part respondent's answer.

Thereupon said cause in said chancery court was at issue between this respondent and the said John W. Scruggs; and thereafter, and on the 22nd day of November, 1867, the deposition of Francis A. Saunders was taken in said cause, upon the interrogatories of this respond-
46 ent and of the cross-interrogatories of the said John W. Scruggs; and on the 2nd day of December, 1867, the deposition of Sarah An' Patteson, Martha Ann Spottswood, Samuel Otis, James J. Donegan, Fred. Tate, and James H. Scruggs were taken *taken* in said chancery cause upon the interrogatories of this respondent and the cross-interrogatories of the said John W. Scruggs. A copy of the deposition of said Saunders, marked "Exhibit No. 3," and a copy of the deposition of said Patteson, Spottswood, Otis, Donegan, Tate, and Scruggs, marked "Exhibit No. 4," are herewith filed, and made parts of respondent's answer.

And at a regular term of the said honorable chancery court in December, 1867, the said cause between this respondent and the said John W. Scruggs was submitted for decree on the bill, answer, exhibits, and proof, and thereupon it was ordered, adjudged, and decreed by the said chancery court that the contract set forth in respondent's said bill of complaint between the said John W. Scruggs and herself, bearing date

the said 14th day of May, 1866, be, and the cause is hereby, in all things ratified and confirmed, and declarred valid, to all intents and pur-
47 poses, in respect to all the property conveyed therein. And the said John W. Scruggs was thereby declared, ordered, and decreed to hold all of said property, both real and personal, specifically, & only as trustee of this respondent, as her sole and separate property, free from marital restrictions, limitations, and incumbrances.

And it was further declared, ordered, and decreed by the said honorable chancery court, be, and the same is hereby, divested out of the said John W. Scruggs as an individual, and the same is hereby vested in him as the trustee of this respondent, and not otherwise. A copy of said decree, marked "Exhibit No. 5," is herewith filed as a part of respondent's answer.

And respondent avers that said decree is in full force and unreversed, by means whereof the said complainant, Milton Humes, assignee in bankruptcy of the said John W. Scruggs, is precluded and estopped from proceeding against this respondent with reference to any of the matters alleged in the said bill of complaint.

WALKER & BRICKELL,
Solicitors for Respndt.

Before me, L. W. Day, clerk of the district court of the U. S.
48 for the northern district of Alabama, this day personally came Narcissa Scruggs, the aforesaid respondent. She makes oath that the statements of her said answer made of her own knowledge are true, & those made upon information she believes to be true.

Sworn and subscribed before me this 13th May, 1871.

N. SCRUGGS.

Subscribed and sworn to before me this 13th day of May, 1871.

LIONEL W. DAY,
Clk. U. S. D. C.

Filed May 13, 1871.

LIONEL W. DAY,
Clk. D. C.

49 In the district court of the United States for the northern district of Alabama.

BETWEEN MILTON HUMES, ASSIGNEE IN BANKruptcy of John W. Scruggs, bankrupt, plaintiff,
and
JOHN W. SCRUGGS & WIFE, NARCISSA Scruggs, defendant. } In equity.

The replication of Milton Humes, assignee in bankruptcy of John W. Scruggs, bankrupt, complainant, to the answer of John W. Scruggs, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer

of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant.

Without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby null and sufficiently replied unto, confessed, or avoided, traversed or denied, is true.

50 All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CABANISS & WARD,
Sols. for Complainant.

Filed June 5, 1871.

LIONEL W. DAY,
Clk. D. C.

51 In the district court of the United States for the northern district of Alabama.

BETWEEN MILTON HUMES, ASSIGNEE IN BANKRUPTCY of John W. Scruggs, bankrupt, plaintiff,
and
JOHN W. SCRUGGS & WIFE, NARCISSA SCRUGGS, defendants.
} In equity.

The replication of Milton Humes, assignee in bankruptcy of John W. Scruggs, bankrupt, complainant, to the answer of Narcissa Scruggs, defendant.

This repliant, saving & reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, saith that he doth and will maintain and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant.

Without that, that any other matter or thing in the said answer
52 contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true.

All which matter and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CABANISS & WARD,
Sols. for Complainant.

Filed, June 5, 1871.

LIONEL W. DAY,
Clk. D. C.

53 In the district court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. Scruggs, bankrupt,
v.
NARCISSA SCRUGGS.
} In equity.

It is agreed that, on the hearing of this cause, the court shall give

each party the benefit of objections to testimony taken before the examiner, by disregarding any testimony so objected to that should on motion be excluded.

The complainant offers the following testimony, viz: Depositions of Francis A. Sanders, James I. Donegan, Algernon S. Fletcher, Hugh N. Moore, William W. Garth, Oliver P. Lyles, Milton Humes, Thomas M. Peters, Caswell B. Derrick, and James H. Scruggs; transcript from probate court of Crittenden County, Arkansas, of deed of trust from Oliver P. Lyles, attorney in fact of John W. Scruggs, to Francis A. Sanders; transcript from the circuit court of said county of Crittenden of proceedings in attachment suit of Peterkin vs. Scruggs; transcript from
chancery court of Alcorn County, Mississippi, of deed from John
54 W. Scruggs to Narcissa Scruggs; transcript from probate court of
Madison County, Alabama, of appointment of Samuel Ragland, administrator; transcript from probate court of Lauderdale County, Alabama, of decree on final settlement of William Weakley's estate; schedule of debts annexed to petition of John W. Scruggs in bankruptcy, and list of debts proved and allowed against his estate in bankruptcy; and Exhibit A to complainant's bill.

And it is admitted that the lost or mislaid deposition of Thomas M. Peters, taken before the examiner in this cause, proved that the only land he ever bought of John W. Scruggs was partnership property of the firm of Scruggs, Donegan & Co., and that he never paid for it, nor received a conveyance of nor relinquishment of dower in it.

LEWIS AND WALKER & BRICKELL,
For Deft.

CABANISS & WARD,
Sols. for Complainants.

Filed 24 Nov., 1871.

LIONEL W. DAY, *Clk.*

55 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE, *vs.* JOHN W. SCRUGGS & WIFE. } In chancery.

On this 17th day of October, A. D. 1871, before me, Lionel W. Day, examiner for said court, comes FRANCIS A. SANDERS, a witness for the complainants in the above-entitled cause, and said witness being sworn and examined by Francis P. Ward, solicitor for complainants, on his oath says:

Int. 1st. Are you acquainted with the parties this suit?

Ans. I was acquainted with the late Jno. W. Scruggs, and am acquainted with his wife.

Int. 2. Are you the Francis A. Sanders to whom the defendants, Jno. W. Scruggs & wife, Narcissa Scruggs, conveyedlands by deed of date May 14th, 1866?

Ans. I am.

Int. 3. Had not the lands composing said Jno. W. Scruggs' plan-
56 tation in Crittenden Co., Arkansas, near the town of Marion, and known as the Island Place, been previously conveyed to you by Oliver P. Lyle as attorney in fact of said Jno. W. Scruggs?

(Defendant, by he' counsel, objects to this inty. because it seeks to

prove by proof what can only be proved in writing, without laying any proper legal predicate for the parol proof proposed to be made.)

Ans. They had.

(Defendant, by her counsel, objects to this answer for the reason that it is illegal, there being no legal predicate laid for the parol proof of the witness, and no reason assigned for the absence of the deed conveying said property to him, and no proposition being made either by complainant's counsel when he propounded the preceeding interrogatory, or by the witness when he answered that either would hereafter at any time during the progress of the examination produce the deed; which objection is here certified to the court for its decision.)

Int. 4. Where is said deed of conveyance of said Oliver P. Lyle,
57 attorney in fact of said Jno. W. Scruggs?

Ans. I don't know where it is; probably among my papers in Memphis.

Int. 5. What did you, as trustee under the conveyance of Jno. W. Scruggs & wife, of date May 14th, 1866, realize from the lands thereby conveyed?

Ans. Nothing.

Int. 6. What became of the lands conveyed to you by said Scruggs & wife?

Ans. They were sold by order of the chancery court of Crittenden County, Ark.

(To so much of the witnesses ans. as is *to* these words: "by order of the chancery court of Crittenden County, Arkansas," the defendant, by her counsel, objects, for the reason that there is better evidence of the order of said court than the parol testimony of the witness, & for this reason said testimony is illegal; which objection is certified, &c.)

Int. 7. Who had the control & management of said lands from
58 the date of said conveyance to you to the date of the order of sale by said chancery court?

Int. They had been rented for the year 1866, before they came into my possession for 1867. They were rented at—nothing came into my hands therefrom. They were in my control from the making of said deed up to the sale by order of the chancery court.

Int. 8. Who rented out and received rent for said lands during the years 1866, 1867, 1868?

Ans. Mr. Scruggs rented them for 1866, before they came into my possession. Said Scruggs also rented them for 1867 & 1868.

Int. 9. Who received the rent?

Ans. I do not know.

Int. 10. Did you claim the rent as trustee?

Ans. 11. I did not.

Int. 12. Why not?

Ans. I suffered Mr. Scruggs to rent the place, and he used the proceeds with my consent.

59 Int. 13. Were the attachments under which said lands were sold levied upon the lands before the date of deed of said Scruggs & wife to you?

(The defendant, by her counsel, objects to so much of this int. as illegal as undertakes to prove by the witness the date of the levy of the attachments, for the reason that there is higher & better evidence of this fact than the parol testimony of the witness; which is hereby certified, &c. Whereupon the solicitor for the complainants announces that he expects to prove the loss of all written evidence as to the date of the levy of said attachment.)

Ans. They were.

(The defendant, by her solicitors, objects to this evidence of the witness, on the ground that it is illegal, for the reason that there is higher and fuller evidence than the parol testimony of the witness of the date of the levy of said attachments; which is certified.)

On this 21st day of October, the examination of the witness, F. A. Saunders, having been heretofore adjourned, is now resumed,
60 and said witness is cross-examined by L. P. Walker, esq., solicitor for the defendant.

Int. 14. Is it not true that Jno. W. Scruggs and the defendant, Narcissa Scruggs, were married in the State of Alabama prior to 1848?

Ans. Yes, sir; I do know the fact.

Int. 15. Is it not true that they have resided in the State of Alabama continuously since their said marriage?

Ans. It has been their domicil ever since.

Int. 16. Is it not true that, subsequent to 1850, the said Jno. W. Scruggs received of means belonging to the separate estate of his wife from the estate of her uncle, William Weakley, late of Florence, Ala., deceased, the sum of about thirty-three hundred dollars, ($3,300?)

Ans. He received the money, but what year I can't particularly say, [& said money, as I always understood, was appropriated to the purchase of what was then known as the "race-track property."]

61 (Complainants, by their solicitors, object to so much of said answer as is embraced in red brackets, because it is hearsay, and because it is not called for by the inty.)

Int. 17. How was the money so received by said Jno. W. Scruggs appropriated?

(Complainant objects to this int. because it is not confined to matters testified of by witness in his direct examination, which is certified, &c.)

Ans. I believe to the purchase of the race-track property.

(Complainants object to this answer, because it purports to be upon belief & not upon knowledge of the fact, & because it is about matters not testified of in his direct examination; which is certified, &c.)

Int. 18. Did you receive this information from said Jno. W. Scruggs at or about the time of his purchase of said race-track property whilst he was in possession of the same, and years prior to the inauguration of this litigation?

62 (Complainant object' to this inty. because it calls for hearsay evidence & because it is not confined to matters testified about in his direct examination; which is here certified to the court, &c.)

Ans. Yes, sir. Mr. Scruggs frequently mentioned the fact to me, and consulted with me about the purchase of the property.

(Complainant objects to this answer, on ground stated in the objection to the preceeding interrogatory; which is certified to the court, &c.)

Int. 19. Is not the property in litigation in this suit a part of said race-track property so purchased by said Scruggs?

Ans. It is.

Inty. 20. Do you know any other money or property belonging to the separate estate of his wife which came into said Scruggs' possession after his said marriage & subsequent to 1848?

Ans. I know that her father paid him some money, but how much can't say.

63 Int. 21. Is her father living or dead, and in year did he die?

Ans. He is dead, & died, I think, in October, 1863.

Int. 22. Is Jno. W. Scruggs living or dead?

Ans. He is dead; he died in last of August or Sept. of the present year.

Int. 23. What price did said Jno. W. Scruggs pay for said race-track property?

Ans. About thirty-three hundred dollars.

Int. 34. What was the value of the said Island plantation in Crittenden County, Ark., at the date of the conveyance to you as trustee by said Jno. W. Scruggs & wife?

Ans. My impression is that it could have been sold for forty thousand dollars in 1866.

Int. 35. What was the age of Jno. W. Scruggs at the time of his death?

Ans. About fifty-three years.

64 Int. 36. What was the condition of his health at the date of conveyance to you as aforesaid?

Ans. He was in his usual health. I remember no complaints.

Int. 37. Did he not have chronic diarrhea, and had he not had such disease years prior thereto, and did he not die of said disease?

Ans. I know that he had been a sufferer from that disease for several years past, & believe that he died with that disease.

Int. 38. What is the age of the defendant, Narcissa Scruggs?

Ans. About 47 years.

Int. 39. Was she not a woman of vigorous health at the date of the deed to you aforesaid?

Ans. She was.

Int. 40. Do you not know after his purchase of said race-track property the said Jno. W. Scruggs sold off a portion thereof to James H. Scruggs, Samuel S. Clark, & Joseph H. Martin?

Ans. He did.

65 Int. 41. Do you remember at what price he sold to James H. Scruggs or either of the parties named in the preceeding interrogatory?

Ans. I do not.

F. A. SANDERS.

Subscribed and sworn to before me October 24th, 1871.

LIONEL W. DAY,
Examiner.

66 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE, &C., *vs.* JOHN W. SCRUGGS & WIFE. } In chancery.

On this 17th day of Octo., 1871, before me, Lionel W. Day, examiner for said court, comes JAS. J. DONEGAN, a witness for complainant in this cause, and said witness being by me sworn on his oath, being examined by F. P. Ward, esq., solicitor for complainant, says:

Int. 1. Are you acquainted with the parties to this suit?

Ans. I knew the late Jno. W. Scruggs, & I know his wife, Narcissa Scruggs.

Int. 2. Do you know of any debts or legal liabilities existing against the said John W. Scruggs on the 14th of May, 1866?

Ans. I know of many debts, but whether legal liabilities I do not know; there are so many terms & tricks in the law, not being a lawyer, I can't tell as to legal liabilities.

Int. 3. State what debts you know of then existing, & whether they have been paid or proved against his estate in bankruptcy.

67 Ans. I have here a list of debts due by said Scruggs to the Northern Bank of Alabama, all of which have been proved against his estate in bankruptcy. I file said list as a part of this my deposition, marking the same "J. J. D.," my initials, as a mark of identification.

Int. 4. Do you know the real estate conveyed by the said Jno. W. Scruggs to his wife, the defendant, Narcissa Scruggs, by his deed of date 14th May, 1866? If yea, state what it was worth.

Ans. I never examined the deed particularly, by it refers to his domicile. I never examined that with a view to determine its value. At that time real estate was very much depressed, and a sale of that kind of property would have been difficult to make. I suppose, tho', to the best of my knowledge, twenty or twenty-five thousand dollars would have been the full value of that property.

Int. 5. Do you know the lands composing Jno. W. Scruggs'

68 plantation in Crittenden County, Arkansas, near the town of Marion, & known as the Island Place?

Ans. I do.

Int. 6. What was its value on 14th of May, 1866?

Ans. I really can't tell. It was a place upon which a high value had been placed, but as to its value then, I can't say. I can't tell personally about its value in 1866, but I heard various statements about it.

Int. 7. Who now owns it?

Ans. I own it.

Int. 8. At what price did you buy it, & when?

Ans. I bought it in 1868—in May. It cost me seventeen thousand & ninety-two $\frac{67}{100}$ dollars.

Int. 9. Did you buy it at public or private sale?

Ans. I bought it at both—at public & private sale.

Int. 10. At what price did it sell at public & at private sale?

Ans. There were two judgments—executions. One was $9,914.14, & the other I compromised for $5,000, it being for about $1,000.00,

69 cost in stamps on execution—court cost, $93.60. I paid a claim for back taxes of $477.00. I paid $720.00 J. P. Earle, a commissioner, for a vendor's lien, which he sold that day by order of the court. I paid another claim to Mr. Swepston—$877.34—for a portion of the land which had been sold under vendor's lien—making the aggregate above named. The amount I paid at the public sale I do not remember, but I agreed to pay the amount of the execution, & did pay all claims & liens on the property.

(The defendant, by her counsel, objects to so much of the witnesses' answer speaks of judgments & executions & their amounts as illegal, there being higher & better evidence of their existence than parol testimony of the witness. She also objects to so much of said answer as undertakes to prove the existence of various liens on said lands as illegal, for the reason that there is higher & better evidence of the existence of said vendor's liens than the parol testimony of the witness; which objection is certified to the court.)

70 This examination having been adjourned on the 27th, is now, by consent, resumed, and the cross-examination is now commenced by L. P. Walker, esq., solcr. for defendant.

Int. 11. Was not the said Island plantation in Crittenden County, Arkansas, estimated to be worth, in 1866, by those familiar with its character & productiveness, at least fifty thousand dollars?

Ans. I can only say this: I never made any inquiry or sought any information from anybody with a view to learning what it was worth. I have heard many persons speak of it as being one of the most valuable plantations in Arkansas. I can't assign a value myself, but I have heard many persons speak of it as being worth $50,000. I heard Mr. Otis say he had a contract for it for $75 per acre. I heard Mr. Dickson, whom I regard as one of the best judges of lands in the county, & who has been on the place & examined it, & he is a farmer by profes-
71 sion, say that it was worth more than $50,000.

Int. 12. What number of acres are in said plantation?

Ans. Between fourteen & fifteen hundred.

Int. 13. Do you not know that after the marriage of said Jno. W. Scruggs with defendant, Narcissa Scruggs, he received monies belonging to the separate estate of his wife?

Ans. I would say yes, but I don't know the fact; but I have understood so from said Scruggs & from Judge Weakley, & I suppose that there is no doubt about it.

Int. 14. Were you not so informed by the said Scruggs long before the institution of this suit?

(Complainant objects to this int. because it calls for hearsay evidence, which is certified to the court.)

Ans. I was.

(Complainant, by counsel, objects to this answer as being hearsay testimony, which is certified, &c.)

72 Int. 15. Were you not so informed by said Scruggs long before his bankruptcy?

(Complainant, by counsel, objects to this int'y because it calls for hearsay testimony, which is certified to the court, &c.)

Ans. I was.

(Complainants, by counsel, object to this answer as being hearsay testimony, which is certified, &c.)

Int. 16. Were you not so informed by said Scruggs prior to 1866?

(Objected to.)

Ans. Yes, sir.

(The complainant, by counsel, objects to this last int'y & the answer thereto as being hearsay testimony, which is certified.)

Int. 17. How much money belonging to the separate estate of his wife did said Scruggs receive from the estate of William Weakley, late of Florence, Alabama, deceased?

Ans. About three thousand dollars, $2,800 or $3,000, as near as
73 I can recollect, tho' I have no memoranda to refresh my memory from. The said William Weakley died in May, 1853.

Int. 18. How much money belonging to his wife's separate estate did said Scruggs recover from Benjamin Patteson?

Ans. I can't say; to the best of my knowledge & recollection, Gen. Patteson must have received over $5,000 from the estate of Samuel Weakley, of Nashville, Tenn., who was the father of said Patteson's first wife, who was the mother of said Narcissa Scruggs, the said Narcissa being the daughter of said Patteson. The said Narcissa was the

only child of said Patteson by his first marriage with the daughter of said Saml. Weakley, deceased, and said Patteson always assured me that he intended to secure the money so received by him to his said daughter, but whether he ever did so, or whether he ever paid it to the said Scruggs, I do not know. Said Patteson further told me at the time he was negociating for the purchase of the Ragland tract
74 of land known as the race-track, that he intended to have the deed therefor made to his said daughter, as he expected in that way to have the money secured to her which he had received from the estate of her grandfather, the said Saml. Weakley, deceased. The deed, however, was not so made, but was made to her husband—under what arrangement & whether any portion of said money was used in paying for said land I do not know. This is the land now in controversy in this suit.

(Complainant, by counsel, objects to all of said answer except the first sentence, "I can't say," because it is irrelevant, immaterial, & not called for in the interrogatory, which is certified to the court.)

Int. 19. Was not said Patteson the father of said Narcissa Scruggs?

A. Yes; reputed such.

Int. 20. Was not the said Narcissa the granddaughter of said Samuel Weakley, deceased?

75 Ans. Yes, sir.

Int. 21. Is said Patteson living or dead? If dead, when did he die?

Ans. He is dead. He died in 1863.

Int. 22. Did not said Patteson, in his life-time, and before the purchase by said Scruggs of the race-track property, inform you that he had received from the estate of the grandfather of said Narcissa Scruggs a certain sum of money?

Ans. (Complainant, by co'nsel, objects to this int. because it calls for hearsay testimony, which is certified.)

Ans. I have no recollection of any precise sum, but whatever was the legacy of his wife or of the granddaughter, he said he had received, & that he intended to account for it by making over property to secure it.

Int. 23. Do you not know that the sum so received by the said Patteson was about $5,000?

76 Ans. I think it was, to the best of my recollection & belief, tho' I have no memoranda to make it certain.

Int. 24. Did not you and said Patteson marry sisters, your wives being daughters of the said Samuel Weakley, deceased?

Ans. Yes, sir; we did marry sisters, & they were daughters of the late Saml. Weakley.

Int. 25. How was said William Weakley, deceased, related to the said Narcissa Scruggs?

Ans. He was her uncle—her mother's brother.

At this point the cross-examination is concluded, & rebutting examination is made by F. P. Ward, solctr. for complainants.

Int. 26 Where did the said Samuel Weakley die?

Ans. I can't exactly say. I now remember that he died Oct. 13th, 1832.

Int. 27. Did he die testate or intestate?

Ans. He died intestate. He left no will.

77 Int. 28. When did the mother of said Narcissa Scruggs die?

Ans. She died July 16th, 1829.

Int. 29. Who died first, said Saml. Weakley or the mother of said Narcissa Scruggs?

Ans. The mother of said Narcissa died first.

Int. 30. Was the said Benjamin Patteson solvent or insolvent from the year 1849 to his death?

(Defendant, by her counsel, objects to this question as irrelevant, & therefore illegal, which is certified, &c.)

Ans. I don't know. He was in business here, but I never scrutinized his affairs. He was marshal for this district during that time, I believe.

Int. 31. Had the said Narcissa Scruggs, after May 14, 1866, any other property besides that conveyed to her by her husband, and the rents and profits thereof?

(Defendant, by her counsel, objects to this question as irrelevant
78 & illegal, which is certified.)

Ans. I have no knowledge of any.

Int. 32. Did you present to F. A. Sanders, as trustee under the deed of said Scruggs & wife *to him* claims? If yea, state what claims.

(To this question the defendant, by her counsel, objects, for the reason that it is not rebutting in its character, & therefore not allowable to the complainant at this stage of the examination of the witness, which is certified.)

Ans. To the best of my recollection I think I presented a claim due by Scruggs, Donegan & Co. to Fearn, Donegan & Co., No. 3, of sixty-three thousand dollars, subject to a credit of eight or ten thousand dollars, & I think a debt of about eleven thousand dollars due Fearn, Donegan & Co., No. 2, & I think I presented a claim due myself, in which I claimed $4,400.00, having paid that amount in a debt of $8,800.00 on which I was security. I don't recollect whether I presented a
79 claim of $2,000.00 due by Mr. Scruggs to me or not.

(The defendant, by her counsel, objects to the answer of the witness, because it is not rebutting in its character to the defendant's cross-examination, and is therefore not allowable, which is certified, &c.)

Int. 38. Who were the beneficial owners of said claims of sixty-three & eleven thousand dollars?

(Defendant, by her counsel, objects to this question, because, 1st, it is irrelevant; 2, it is not rebutting in its character to defendant's cross-examination of the witness, which is here certified to the court.)

Ans. I was myself interested in them to the amount, probably, $40,000, and the late Dr. Fearn's estate, I think, ten or fifteen thousand dollars.

(The defendant, by counsel, makes the same objection to this answer that she has made to the question of complainant, which is here certified to the court for its decision.)

JAMES J. DONEGAN.

80 Subscribed and sworn to before me.

LIONEL W. DAY.

Dated Octo. 23, 1871.

81 *Indebtedness of John W. Scruggs at Northern B'k of Ala.*

No.	As principal.	Amount.	When due.
			1861.
2988.	Geo. Cox & Co., & Jno. W. Scruggs.....	2,831 20	Nov. 13.
			1862.
3105.	J. W. Scruggs.....	2,810 62	May 1.

3122.	do.	3,024	60	Apl. 17
3149.	do.	6,453	20	May 24.
3181.	do.	5,068		June 16.
3195.	do.	1,761	90	May 16.
3196.	do.	2,425		June 26.
3213.	do.	4,331	82	July 11.
3252.	do.	6,176	74	Augt. 17.
		$34,883	08	

No.	As endorser for—			
				1860.
2251.	Campbell & Co	5,000		Dec. 8.
2349.	W. D. Wear, $500 paid 15 Feby, '61	546	75	" 25.
				1861.
2591.	Jno. W. Nance	1,408	42	Jany. 18.
2791.	Nath. W. Steele	1,650	46	Apl. 13.
2843.	James Lamar	1,552	75	May 17.
2959.	Jas. A. Boyd	2,512	65	July 4.
2960.	E. E. Douglass, $1,824.88, May 9th, '68	3,276	25	Oct. 29.
2962.	James Lamar	7,866	30	Nov. 4.
				1862.
3025.	James H. Scruggs	5,000		Mar. 21.
3055.	Jno. W. Drake	3,558	50	" 14.
3106.	H. B. Turner	5,633	65	Apl. 28.
3109.	Geo. W. Drake	4,578	30	May 1.
3211.	Benja. Patteson	500		July 11.
	3221. A. J. Esslinger	525	15	July 23.
82	3255. James H. Scruggs	3,289	15	Augt. 18.
	3299. John Giles	1,023		Dec. 16.
3302.	do.	1,023		" 25.
		$48,944	18	
	Deduct partial payments above	2,324	88	
		$46,619	30	

83 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE, &C., }
vs.
JOHN W. SCRUGGS AND WIFE. }

On this 15' day of November, 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes A. S. Fletcher, a witness for the complainant in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by F. P. Ward, esq., solicitor for the complt., and in the presence of L. P. Walker, esq., solicitor for the defendant, whereupon said witness deposes and says:

Int. 1. Were you acquainted with the parties to this suit?

Ans. Yes.

Int. 2. Do you know of any debts existing against the said John W. Scruggs on the 14th day of May, 1866. If yea, state what debts; whether they have paid or not, & whether they have been proved against his estate in bankruptcy.

Ans. I know of debts that existed against said Scruggs on 14th day of

May, 1866. I knew of two notes due the estate of Richard Holding and one due Wm. Holding; one note due Richard Holdings was for
84 $1,755, due July 15, 1855, and subject to certain credits, amounting to $800, the last being made Octr. 3rd, 1860. The other note due Richard Holding was for $5,400, dated Jan'y 5, 1851, subject to various credits for payment of interest up to Feb'y 28, 1862, amounting in the aggregate to $2,002.40. The note due Wm. M. Holding is for $5,775.22, dated 20' December, 1858, subject to various credits, the last dated August 7th, 1861, & amounting the aggregate to $867. The instruments above described as notes, bonds with the seal of the maker. Except the payments above recited, no payments have been made on such bonds which are still outstanding.

Int. 3. Do you know the property in controversy in this suit, known as the residence of the said John W. Scruggs?

Ans. I do.

Int. 4. What was it worth on the 14 day of May, 1866?

Ans. I should say it was worth twenty-five thousand dollars.

The direct examination is here closed, &

85 Int. 5. In 1866 was there not great scarcity of money in this community?

Ans. There was.

Int. 6. In 1866 was it not very difficult to sell real estate in this community except in payment of debt?

Ans. I would say that nearly all of the transfers of real estate at that time that I knew was for the payment of debts.

Int. 7. In 1866 do you know of any demand whatever for property of the character of that in controversy?

Ans. I do not.

Int. 8. In your examination-in-chief you state that said property was worth in 1866, you think, about $25,000. Are you to be understood as meaning that in your opinion said property would have sold in 1866 for that sum in cash?

Ans. No; I don't know what it would have sold for in cash.

Int. 9. Is not your wife an heir-at-law of the estate of Richard Holding, deceased, concerning the debt to whom you have testified in your examination-in-chief?

86 Ans. Yes, she is.

A. S. FLETCHER.

I certify that on this 15' day of November, A. D. 1871, as written in the caption hereof, I was attended by said A. S. Fletcher, a witness for complainant; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

87 Witness-ticket, $1.50.

In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE, }
vs.
JNO. W. SCRUGGS & WIFE. }

On this 18 day of Novr., 1871, at Huntsville, in said district, before

me, Lionel W. Day, examiner for said court, comes HUGH N. MOORE, a witness for the complainant in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by F. P. Ward, esq., solicitor for the complainant, and in the presence of solicitor for the , whereupon said witness deposes and says:

Int. 1. Are you acquainted with the property in controversy in this suit, it being the residence of the late Jno. W. Scruggs, and known as the race-track property?

Ans. I am.

Int. 2. What was it worth on the 14 day of May, 1866?

Ans. I would say, including house and land, it was worth about
88 ($25,000) twenty-five thousand dollars.

Int. 3. What was the cost or value of the improvements made on said property by said Jno. W. Scruggs?

Ans. The buildings I am confident cost from ($14,000) fourteen to ($20,000) twenty thousand dollars. I should think the buildings in good repair were worth twenty thousand dollars.

Int. 4. Who built said residence?

Ans. Moore (myself) and Winston made the brick-work of the main building. I don't know who built the other brick-work. Wm. L. Kerr did the carpenter-work to same building.

(At this point the direct examination is closed, & the cross-ex. is made by L. P. Walker, counsel for defendant.)

Int. 5. Are you to be understood as meaning to say in your examination-in-chief, that in your opinion said property could have sold in 1866, in cash, for either twenty or twenty-five thousand dollars?

Ans. No.

89 Int. 6. Is it not your opinion that *that* said property would not have sold in said year for cash for either of those sums?

Ans. Yes.

Int. 7. Is it not true that the demand for property of the character of that in controversy was then and is now of rare occurrence?

Ans. It is.

HUGH N. MOORE.

I certify that on this 18 day of Nov., A. D. 1871, as written in the caption hereof, I was attended by said Hugh N. Moore, a witness for ; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

90 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE, &C.,
vs.
JNO. W. SCRUGGS & WIFE.

On this 15th day of November, 1871, at , in said district, before me, Lionel W. Day, examiner for said court, comes F. P. Ward, esq., solicitor for complainant, & produces & offers to examine as a witness for the complainant in the above-entitled cause, WILLIAM W.

GARTH, & thereupon defendant, by her counsel, objects to the examination of said witness, because on a prior day it was announced by said solicitor of the complainant that he was through with his examinations, & defendant denies his right now to introduce witnesses in behalf of the complainant.

And thereupon the complainant's solicitor comes & says that the defendant's solicitor is mistaken about his having announced that *that* he was through with his examination; that he, the defendant's solicitor, did not so *so* announce, but had all along relied upon his right under the written agreement on file to continue examining witnesses until the November term, 1871, of the district court and at this point.

And thereafter said F. P. Ward, esq., introduced A. S. Fletcher, Hugh N. Moore, Isham Fennell, Geo. P. Beirne, and Wm. M. Holding, in the same behalf, and proposes to take the deposition of said persons as witnesses; whereupon the same objection by L. P. Walker, esq., in behalf of defendant, & the same response by F. P. Ward, for complainants, is made as hereinbefore appears, all of which is certified to the court for its decision. And thereupon the said WILLIAM W. GARTH, being duly sworn to testify in the above-entitled cause, as such witness for the complainant, and said witness being examined by F. P. Ward, esq., solicitor for complainant, in the presence of L. P. Walker, esq., solicitor for defendant, deposes and says:

91

Int. 1. Were you acquainted with the parties to this suit?

Ans. I was.

Int. 2. Do you know of any debts existing against the defendant on 14th May, 1866? If yea, state what debts.

Ans. I know of one debt then existing to J. W. Garth, my father, which debt and interest amounted, according to the computation of the officer before whom I once proved it, to ($7,350) seven thousand three hundred and fifty dollars on the 17th day of October, 1868, the principal being ($4,900) forty-nine hundred dollars, contracted 25 Febr'y, 1861, evidenced by a promissory note. This debt is still unpaid.

92

Int. 3. Do you know the property in controversy in this suit, being the residence of the said John W. Scruggs, & known as the race-track property?

Ans. Yes, I know it; I know where is.

Int. 4. What was it worth on the 14th day of May, 1866?

Ans. I can only answer this question by comparison. I have heard that that property contained sixty acres; it may have more or less. I would suppose that that property in 1866 was worth between eighteen & twenty thousand dollars.

(At this point the direct examination is closed, & the cross-ex. is made by L. P. Warker, esq, counsel for defendant.)

Int. 5. Do you mean to be understood as saying that it is your belief that said property could have been sold for cash at that sum?

Ans. I will ans. that by stating that that would be a large sum for a North Alabam'an to have at that time, & that any one having that sum & wanting that species of property could have afforded to have paid that sum for it, in my judgment.

Int. 6. Is it not true that the occasions would be very rare in this community when property of the character of that in controversy would be in any demand?

Ans. They would be rare.

93

Int. 7. Are you not the executor of Jessie W. Garth, concerning whose debt you have testified in your examination-in-chief?

Ans. I am such executor, and on that account, & for the further reason that I am an heir-at-law of his estate, I regretted being a witness in this cause.

W. W. GARTH.

I certify that on this 15 day of November, A. D. 1871, as written in the caption hereof, I was attended by said Wm. W. Garth, a witness for complainant; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

94 Be it remembered that on the 31rst day of July, 1871, at the office of Oliver P. Lyles, in the city of Memphis, Shelby County, State of Tennessee, in pursuance of the commission hereto annexed, we, Thos. G. Scarbrough and Chas. Kortrecht, two of the commissioners named in said commission, caused to come before us OLIVER P. LYLES, the said witness named in said commission, who, being first carefully examined and cautioned, and duly sworn to testify to the whole truth and nothing but the truth, saith:

95 To interrogatory 1st he answers & says: I am acquainted with defendant John W. Scruggs, & have seen his wife. I do not know that I know the plaintiff.

To the 2nd interrogatory he answers: Yes; I executed such a deed.

To the 3rd interrogatory he answers: I had a power of atty. from said John W. Sc'uggs of that date, 6th Feb., 1866. I now have before me what purports to be a copy of that power, and in the 1st part it reads, "8th day of February, 1866." This I think is a mistake; I would not have made the deed before I recd. the power; this power of attorney under which I acted was to the best of my belief executed & acknowledged on the 6th of Feby., 1866; the copy shows the acknowledgment on that day. I, not having the original power of atty. in my possession, I now make the copy, Exhibit A to this my deposition, and have signed my name to the exhibit, with apt words of identity.

96 To the 4th interrogatory he answers: I do not know that I am in possession of any other facts material to the cause that would benefit either party to the litigation, as the recitals in the conveyance covers what I understood to be the object thereof.

O. P. LYLES.

And we do hereby further certify that the preceeding deposition was reduced to writing by the said witness, Oliver P. Lyles, in our presence, and signed by the said Oliver P. Lyles, and that we are not of counsel or attorney for either of the parties to the said suit, nor are we interested in the event thereof.

Witness our hands this the 31rst day of July, 1871.

THOS. G. SCARBROUGH, *Comr.*
CHAS. KORTRECHT, *Comr.*

97 Know all men by these presents that I, J. W. Scruggs, of the county of Madison, State of Alabama, have this 8th day of February, 1866, made, nominated, and appointed, and do hereby nominate and appoint, O. P. Lyles, of Crittenden County, Arkansas, my true and

lawful attorney in fact for me and in my behalf, to assign, transfer, and convey in trust my plantation in Crittenden County, Arkansas, called the Island Place, containing 1,200 or 1,500 acres, lying on Marion Lake, and surrounded by it, being the place purchased by me of John W. Hopkins, R. M. Kirby, & O. P. Lyles, in or about 1858 or 1859; for a more particular description whereof reference is hereby made to the deeds from the vendors aforesaid. Said O. P. Lyles will convey said land to a suitable, intelligent, and honest trustee, to secure the prompt and certain payment of my indebtedness to the late firm of Scruggs, Donegan & Co., who did business in New Orleans, and to which firm I am indebted largely for advances made. The purpose of the said trust-
98 deed is to pay said Scruggs, Donegan & Co., that they may be able with the proceeds of said land to meet and liquidate the debts due from said firm to their creditors. Said attorney will execute the contemplated deed of trust in such manner, with such power and authority conferred on the trustee, as will most effectually and promptly secure the purposes of this trust. I hereby confirm and ratify the acts and doings of my said attorney, to be performed in the premises, and hold myself bound by them as fully and completely as if I were present doing the same myself.

In witness whereof I have hereunto set my hand and seal this day first above written.

JNO. W. SCRUGGS. [SEAL.]

UNITED STATES OF AMERICA,
State of Tennessee, Shelby County:

Be it remembered that on this 6th day of February, in the year of our Lord one thousand eight hundred and sixty-six, before
99 J. W. Westcott, a commissioner resident in the city of Memphis, aforesaid, duly commissioned and qualified, by the executive authority and under the law of the State of Arkansas, to take the acknowledgments of deeds, &c., to be used and recorded therein, personally appeared John W. Scruggs, to me known to be the individual named in and who executed the foregoing power of attorney, and whose name is signed thereto, and having first made known to him the contents thereof, he acknowledged that he signed, sealed, acknowledged, and delivered the same to O. P. Lyles, the grantee therein named, on the day therein named, as his free, voluntary act and deed, for the consideration and uses and purposes therein named.

In testimony whereof I have hereunto set my hand and affixed my official seal as such commissioner this 6th day of Feb., A. D. 1866.

[SEAL.] J. W. WESTCOTT,
Commissioner for Arkansas, in Tennessee, at Memphis.

100 STATE OF ARKANSAS,
County of Crittenden:

I, John Swepston, clerk of the circuit court, & ex-officio recorder in and for said county, do hereby certify that the within and foregoing is a true copy from the original filed for record Feby. 7th, 1866, and duly recorded 22nd day of May, 1866.

101 JOHN SWEPSTON,
Clk., & Ex-officio Recorder B. Ct., D. C.

STATE OF ARKANSAS,
County of Crittenden:

I, John Swepston, county clerk & ex-officio recorder within and for the county and State aforesaid, do hereby certify that the foregoing is

a true copy from the record of a power of atty. from J. W. Scruggs to O. P. Lyles, as appears of record in my office, in Book K, pp. 553.

Witness my hand and official seal this 25th day of July, A. D. 1871.

{ SEAL OF CIRCUIT COURT, } JOHN SWEPSTON, *Clerk*,
{ CRITTENDEN CO., ARKANSAS. } By W. W. SWEPSTON, *D. C.*

102 Charles Kortrecht, C. W. Metcalf, and Thomas G. Scarbrough, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you, or any two or more of you, are invested with full power and authority to examine Oliver P. Lyle, corporal oaths as witnesses in a cause depending in the district court of the United States for the northern district of Alabama, wherein Milton Humes, assignee of John W. Scruggs, bankrupt, is plaintiff, and John W. Scruggs & wife, Narcissa Scruggs, as defendants, on the part of the plaintiff, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded that you, or any two or more of you, at certain days and places, to be ap-
103 pointed by you for that purpose, do cause the said Oliver P. Lyle to come before you, and there examine on oath on said interrogatories, and that you take said examination and reduce the same unto writing, and return the same annexed to this writ, closed up under your seals, or the seals of any two or more of you, unto said court before the judges thereof with all convenient speed.

Witness the Hon. Richard Busteed, judge of said court, this 18th day of July, 1871.

{ DISTRICT COURT U. S., } LIONEL W. DAY,
{ N. D. OF ALABAMA. } *Clerk D. C.*

104 In the district court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. Scruggs, bankrupt,
vs.
JOHN W. SCRUGGS & WIFE, NARCISSA Scruggs. } 75. In equity.

Interrogatories propounded by the complainant to Oliver P. Lyle, a witness residing in the city of Memphis, county of Shelby, State of Tennessee, whose deposition taken in answer thereto will be read as evidence for the complainant on the hearing of this cause, viz:

1. Are you acquainted with the parties to this suit?

2. Did you or not, as attorney in fact for the defendant, John W. Scruggs, execute a deed of conveyance of lands near Marion, Crittenden County, Arkansas, known as the Island Place, to Francis A. Sanders, as trustee, of date February 7, 1866?

3. Had you or not a power of attorney from said Scruggs to execute said conveyance of date February 6th, 1866? If yea, make such
105 power of attorney an exhibit to your deposition in this cause.

4. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this

your examination, or the matters in question of this cause? If yea, set forth the same fully and at large in your answer.

CABANISS & WARD,
Sols. for Complainant.

Filed June 23, 1871.

LIONEL W. DAY,
Clk. D. C.

Received July 5, 1871.

Z. E. THOMAS,
U. S. Marshal.

UNITED STATES OF AMERICA,
Northern District of Alabama:

Executed by serving a copy of the written interrogatories upon Walker & Brickell, attorneys.
Huntsville, July 5, '71.

Z. E. THOMAS,
U. S. Marshal,
Per EDGAR, *Deputy.*

Service, $2.00.

A true copy.
July 18, 1871.

LIONEL W. DAY,
Clk. D. C.

106 My best recollection as to my deposition in the case of Milton Humes, assignee, vs. Narcissa Scruggs et al., is as follows:

I am acquainted with the parties to this suit. I knew nothing of the pecuniary condition of the firm of Sheffey, Scruggs & Martin in 1866. The latter part of 1867 I became the attorney, and as such familiar with the assets & liabilities of the firm. At that time it was insolvent, its assets consisting of land in the corporate limits of the city of Huntsville, Alabama, worth, in my opinion, about $7,000, and wild lands, subject to overflow, in the State of Arkansas, in my opinion, worthless. The nominal assets of Scruggs, Donegan & Co., over $400,000. The nominal assets of John W. Scruggs, individually, about $40,000. The nominal assets of Scruggs, Drake & Co., about $40,000.

The above statement is made only to the best of my recollection. Milton Humes substituted in place of original deposition, mislaid.

CABANISS & WARD,
Sols. for Complainants.

LEWIS & WALKER & BRICKEL,
For Deft.

107 The district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE, &C.,
vs.
JOHN W. SCRUGGS & WIFE. } No. 75. In chancery.

On this 16th day of Octr., A. D. 1871, before me, Lionel W. Day, examiner of said district court, comes CASWELL B. DERRICK, a witness for the complainant, who, being by me first duly sworn, and being examined by F. P. Ward, solicitor for said complainant, says:

Int. 1st. Are you acquainted with the parties to this suit?

Ans. I used to know Scruggs; I do not know the other parties.

Int. 2. Did the defendant Narcissa Scruggs, on the 14th May, 1866, execute to you a written relinquishment of her right of dower in lands purchased by you from the defendant John W. Scruggs? If yea, state when and in whose presence it was executed, and file a copy thereof as an exhibit to your deposition in this cause.

Ans. No, sir; she did not execute such relinquishment.

Int. 3. Did the defendant Narcissa Scruggs ever execute to you a written relinquishment of dower in lands purchased by you from
108 the defendant Jno. W. Scruggs?

Ans. No, sir.

Int. 4. Did you ever buy land from Jno. W. Scruggs?

Ans. I did.

Int. 5. State when and what land; whether it belonged to him individually or to a firm of which he was a member; when and at what price was paid for the land, and when and from whom a deed of conveyance of the legal title was received.

Ans. The land was in Jackson County, Alabama, the description of which is contained in a deed of conveyance, a copy of which is here filed, marked with my initials, "C. B. D.," and made a part of my deposition. I understood that the land was his individual property, and the price I paid was seven thousand dollars. The conveyance was made on 26th November, 1860, the time when I purchased the land.

Int. 6. Did you ever buy any other land from said Scruggs or his wife, or receive from them a conveyance of any other land?

Ans. No, sir.

The witness being cross-examined by R. C. Brickell, esq., for defense, says:

Int. 7. Mr. Derrick, you have said that the defendant Narcissa Scruggs did not, on 14th May, 1866, execute to you a relinquish-
109 ment of her dower in any lands. Now, do you mean to say that she did not execute such relinquishment, or do you mean only to say that you have no knowledge of her executing such relinquishment on that date?

Ans. No, sir; I have no knowledge.

Int. 7. State whether you mean to state it as a fact that she did not execute such relinquishment, or only to state it as a fact that you have no knowledge of such relinquishment?

Ans. I have no knowledge.

Int. 8. May she not have executed such relinquishment at that time and have delivered it to some one to be delivered to you?

Ans. I don't know.

Int. 9. Do you mean to say that she did not on that day execute a relinquishment to you of her dower of the lands you had purchased of her husband, Jno. W. Scruggs?

Ans. Not that I ever heard of or knew of.

Int. 10. Then you mean to state it as a fact that she did not on the day specified execute to you a relinquishment of her dower in the lands in Jackson Co.?

Ans. Not as I know of.

Int. 10. Then you mean to say only that you have no knowledge of any such relinquishment?

Ans. No, sir.

110 Int. 11. When did you purchase those lands of Jno. W. Scruggs?

Ans. It was on the date of the deed.

Int. 12. Was the purchase for cash or on credit?
Ans. It was for cash; and I wish I had that much cash now.
Int. 12. In what business was Jno. W. Scruggs then engaged?
Ans. I don't know all of his business. He had an office in Huntsville.
C. B. DERRICK.

Subscribed and sworn to 'fore me this 16th day of Octr., 1871.
LIONEL W. DAY,
Examiner.

111 This indenture, made this 26th day of November, eighteen hundred & sixty, between John W. Scruggs, of the county of Madison, State of Alabama, and Narcissa Scruggs, his wife, of the first part, and Caswell Derrick, of the county of Madison, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of seven thousand dollars to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, the following tract of land, situated in the county of Jackson, State of Alabama, viz: The northwest quarter and the northeast quarter of section two, township four, range three east; also, the fractional parts of the southwest quarter and the southeast quarter of the same section, township, and range; also, the west half of the northwest quarter of section one, same township and range; also, the west half of the southwest quarter of section thirty-five, township three,
112 range three east; also, thirty-five acres included in the southwest quarter of the southeast quarter of same section; also, the northwest quarter of section three, township four, range three east; also, the northwest quarter of the southwest quarter of same section, township, and range, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and also the estate, right, and title whatever, as well in law as in equity, of the said parties of the first part of, in, and to the same; to have and to hold all and singular the above-described tract of land, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person or persons whomsoever claiming the same, shall and will warrant, and by these presents forever defe*r*ed.

In witness whereof the said parties of the first part have here-
113 unto set their hands and seals the day and year first above written.

JNO. W. SCRUGGS. [SEAL.]
N. SCRUGGS. [SEAL.]

STATE OF ALABAMA,
Madison County:

I, James H. Scruggs, judge of probate in and for said county, do hereby certify that John W. Scruggs and Narcissa Scruggs, his wife, who are known to me, acknowledged before me on this day that, being

nformed of the contents of the foregoing conveyance, that they signed the same voluntarily on the day the same bears date.

Given under my hand and seal this 26th day of November, 1860.

JAMES H. SCRUGGS,
Judge of Probate.

STATE OF ALABAMA,
Jackson County:

I, John H. Norwood, judge of the probate court in and for said county, hereby certify that the foregoing conveyance was filed in my office for record on the 27th day of November, 1860, & was duly recorded in deed-book "No. one," pages 97, 98, & 99.

JOHN H. NORWOOD,
Judge.

I, David Tate, judge of the court of probate in & for Jackson County, State of Alabama, hereby certify that the foregoing conveyance was filed in my office for registration on the 16th day of August, 1871, and was recorded in deed-book No. 5, pp. 259, 260, 261.

C. B. D.

DAVID TATE,
Judge P. C.

[Int.-rev. 5-ct. stamp. Aug. 16th, 1871. D. T., J. P. C.]

114 THE UNITED STATES OF AMERICA,
Northern District of Alabama:

On the 31st day of October, A. D. 1871, before me, Lionel W. Day, examiner of the district court for said district, comes JAMES H. SCRUGGS, a witness for complainants in a certain cause depending in said court, wherein Milton Humes, assignee of Jno. W. Scruggs, is plaintiff, & John W. Scruggs & Narcissa Scruggs, his wife, are defendants, and said witness being duly sworn, *by* was *by* examined by Francis P. Ward, solicitor for complainants, whereupon said witness deposes & says:

Int. 1. Did you hold any public office on the 26th day of November, 1860? If yea, state what office.

Ans. I did. I was probate judge of Madison County, State of Alabama, at that time.

Int. 2. Look at the written instrument now shown you, purporting to be a deed of conveyance for a tract of land in Jackson
115 County, Alabama, from Jno. W. Scruggs and wife, Narcissa Scruggs, to Caswell Demick, in consideration of seven thousand dollars, dated November the 26th, 1860, with the certificate of James H. Scruggs, judge of probate of Madison County, Alabama, of the acknowledgement of the execution thereof, and state whether you are the James H. Scruggs who made such certificate of acknowledgement; whether the grantors in said conveyance were the defendants in this cause; whether they acknowledged the execution of said deed of conveyance; and, if so, when?

Ans. All I can say is this, that I know nothing of the and bounds or value of said lands, but the certificate of acknowledgement I made and it is a genuine one. The grantors said deed were the defendants in this cause, they did acknowledge said deed of conveyance
116 and on the dates mentioned, which is the 26th day of November, 1860.

Int. 3. Do you know the property in Madison County, Alabama, conveyed by said Jno. W. Scruggs to said Narcissa Scruggs on May, 1866, being the property on which the residence is?

Ans. I do.

Int. 4. What income has she derived from it since the conveyance to her?

Ans. Not one cent: on the contrary, it is an expense to her.

Int. 5. What other property has she owned since May, 1866, besides that conveyed to her by her said husband?

(Defendant, by her counsel, objects to this question as irrelevant & illegal, which objection is certified to the court for its decission.)

117 Ans. I don't know what property has been conveyed to her by her husband.

(Defendant, by her counsel, objects to this answer as irrelevant and illegal, which is certified.)

(At this point the direct examination of plaintiff is concluded, & the witness is cross-examined by Gen. L. P. Walker for the defendant.)

Int. 7. Are you not a brother of the Jno. W. Scruggs deceased?

Ans. I am.

Int. 8. Are you not familiarly acquainted with the property known as the race-track property, conveyed to the said Jno. W. Scruggs by Samuel Ragland, and afterward by said Jno. W. Scruggs to Narcissa Scruggs in 1866, & which is the subject-matter of this litigation?

Ans. I am.

118 Int. 9. In what year was it purchased by said Jno. W. Scruggs of the said Ragland?

(Complainant, by counsel, objects because there is higher & better evidence of the fact sought to be elicited, which objection of compl'ts is certified to the court for its decision.)

Ans. It was purchased in the year .

(Complainant, by counsel, objects to this ans., because there is higher & better evidence of the fact sought to be elicited, which is certified, &c.)

Int. 10. Whose money paid for the said property so purchased by said Jno. W. Scruggs of said Ragland?

(Complainant objects to this question, because it is not confined to facts & circumstances connected with matters stated by the witness in his direct examination, which is certified.)

Ans. The money of said Narcissa Scruggs.

119 (Complainant, by counsel, objects to this answer for the same reasons as stated in objection to the previous question, which is certified, &c.)

Int. 11. From what source was this money derived?

(Complainant, by counsel, objects to this question on the ground of his objection to the 10th int'y, which is certified, &c.)

Ans. From the estate of Wm. Weakley, of which she was an heir at law.

(Complainant, by counsel, objects to this answer on grounds stated his objection to int'y 10, which is certified, &c.)

Int. 12. How did it happen that in taking said deed from the said Ragland the said Jno. W. Scruggs took it to himself instead of to his wife?

(Complainant, by counsel, objects to this question on the grounds stated in his objection to the 10th int'y, which is certified.)

120 Ans. Well, sir, at my suggestion the deed was taken to himself instead of to his wife. At the time referred to the said Jno. W. Scruggs was about to open a commission-house in Charleston, South Carolina, & was without means or credit, & my reason for giving him this advice was that the conveyance to himself would give him a credit, whereas then he had none.

(Complainant, by counsel, objects to this answer on grounds stated as objection to 10 int'y, which is certified to the court.)

Int. 13. Are you acquainted with the plantation in Crittenden County, Arkansas, conveyed by said Jno. W. Scruggs, in 1866, to Frances A. Saunders, as trustee, &c.?

(Objected to.)

Ans. I am familiarly so.

(Complainant, by counsel, objects to the last question & answer on grounds stated in his objection to int'y 10, which is certified.

121 Int. 14. What was said plantation worth in 1866?

(Complainant, by counsel, objects to this question on grounds stated in his objection to int'y 10, which is certified.)

Ans. At least seventy-five thousand dollars; my brother had refused that sum for it. But for the war it would have been worth three hundred thousand dollars.

(Complainants, by counsel, objects to this question on grounds in objection to int'y 10, which is certified, &c.)

Int. 15. What was the condition of the health of said Jno. W. Scruggs in 1866?

(Complainants, by counsel, objects to this question on grounds stated in his objection to int'y 10, which is certified, &c.)

Ans. He was then feeble, suffering from chronic diarrhea, of which he has since died.

122 (Complainant, by counsel, objects to this ans. on grounds stated to the 10 int'y, which is certified, &c.)

Int. 16. In what condition of health in 1866 was the said Narcissa Scruggs?

(Complainant, by counsel, objects to this int'y on grounds stated to his objection to int'y 10, which certified to the court.)

Ans. In good health, so far as I know.

(Complainants, by counsel, objects to this question on grounds stated in his objection to int'y 10, which is certified.)

Int. 17. If she had been otherwise, would you not likely have known it?

(Complainant objects to this question on the grounds stated as his objection to int'y 10, which is certified, &c.)

123 Ans. I would, as I was with the family every day.

(Complainants, by counsel, objects to this answer on the grounds stated as his objection to int'y 10, which is certified, &c.)

(At this point the cross-examination is closed & the complainant's solicitor says that without wa'ving the objections taken to the questions & answers in the cross-examination, propounds the following rebutting interrogations:)

Int. 18. When did the said William Weakley die?

Ans. I cannot say; I have no knowledge.

Int. 19. Did he die testate or intestate?

Ans. He died intestate so far as I am informed and believe.

Int. 20. When did the mother of the defendant, Narcissa Scruggs, die?

Ans. I do not know.

124 Int. 21. By whom was the purchase-money for the said race-track paid to the said Ragland?

Ans. My impression is that it was paid by James J. Donegan as the agent of Samuel Weakley, of Florence. I can't state this positively, but the money intended for Narcissa Scruggs was to be paid by said Donegan. Samuel Weakley was the administrator of William Weakley, &

said Donegan was Samuel Weakley's agent here to pay the money to Narcissa Scruggs, as one of the heirs of Wm. Weakley. I don't know that Samuel Weakley was the administrator of Wm. Weakley, but I so understood it & was so informed & believe.

Int. 22. Did you see said purchase-money paid to said Ragland?

Ans. I did not; I can state that I know my brother had no other means except the money so coming to his wife. He had no money to pay his expenses to Charleston, & I loaned him money to pay his expenses.

125 Int. 23. Did you see the said Donegan pay the money to any one?

Ans. I did not. I heard my brother afterward acknowledge that he had received it from Mr. Donegan.

(Complainant objects to all of this ans. except the first sentence, "I did not," as not being responsive to the ans., which is certified, &c.)

Int. 24. Who offered said John W. Scruggs $75,000 for the Arkansas plantation?

Ans. I do not now recollect. He did mention the name of the party at the time, but I have now forgotten it.

Int. 25. Were you present when the offer was made?

Ans. I was not.

Int. 26. Have you since May, 1866, as agent of any insurance company, insured the life of the said Jno. W. Scruggs or caused it to be insured?

126 (Defendant, by her counsel, objects to this question as irrelevant & illegal, which is certified.)

Ans. I have.

(Defendant, by her counsel, objects to this answer as irrelevant and illegal, which is certified, &c.)

Int. 27. In what companies and for what sum?

(Defendant, by her counsel, objects to this question as illegal and irrelevant, which is certified, &c.)

Ans. In the Arlington, of Richmond, Virginia, for ten thousand dollars; and about that time my brother's health was better than it was before or since 1866.

(Defendant, by her counsel, objects to this question on grounds of illegality and irrelevancy, which is certified.)

Int. 28. Is that the only company in which you have aided in getting his life insured since 1866?

(Defendant, by counsel, objects to this question as irrelevant and illegal, which is certified.)

Ans. The only company of my own knowledge.

(Defendant, by her counsel, objects to this answer because it is
127 irrelevant & illegal, which is certified, &c.)

(At this point the re-rebutting examination of the witness is made by L. P. Walker, esq., for defendant.)

Int. 29. Did you not, prior to 1860 & after this purchase of said race-track property, & whilst he was in possession of the same, hear the said Jno. W. Scruggs say that the money which had been paid for the same was the money of his wife and belonged to her separate estate?

(Complainant, by counsel, objects to this question because it calls for hearsay evidence, & because it is not confined to facts and circumstances connected with matters testified about at the *the* direct or rebutting examination of the witness, which is certified.)

Ans. Very often.

(Complainant, by counsel, makes the same objection to this answer as is made to the question, which objection is here certified to the court for its decision.)

JAS. H. SCRUGGS.

Subscribed and sworn to before me this 31st day of October, 1871. And I further certify that the examination was by me reduced to writing in the presence of F. P. Ward, solicitor for complainant, & L. P.
128 Walker, solicitor for defendant, & of the said Scruggs in his presence, & by said Scruggs afterwards signed in my presence.
Witness my hand & seal day & year before written.

LIONEL W. DAY, [SEAL.]
Examiner.

129 This deed, made at Marion, Crittenden County, Arkansas, on the 7th day of February, 1866, by and from Oliver P. Lyles, of the county and State aforesaid, as attorney in fact for John W. Scruggs, of Madison County, State of Alabama, of the first part, and Francis A. Saunders, of the city of Memphis, and the State of Tennessee, of the second part, witnesseth:

That for and in consideration of the sum of ten dollars cash paid by said Lyles to said Saunders, the receipt whereof is hereby acknowledged, and the other consideration hereinafter mentioned, the said O. P. Lyles, as attorney in fact as aforesaid, has this day granted, bargained, and sold, & does bey these present' grant, bargain, sell, and convey unto the said Saunders, his heirs and assigns, the following tracts or parcels of land situated, lying, and being in said county of Crittenden, and State of Arkansas, and known and designated in the plats of the public surveys as the south half of the northwest frl. half of section thirteen,
(13;) the north frl. half of section twenty-four (24) in township
130 7 N., R. 8 east; the southeast quarter of section 13; the S. ¼ of N. E. ¼ of sect. 13, township 7 N., R. 8 east; the west half of section 18; S. W. ¼ of N. E. ¼ & the W. ½ of S. E. ¼ & S. E. ¼ of S. E. ¼ of section 18; the north half of section 19; the S. E. ¼ of N. E. ¼ & the N. E. ¼ of S. E. ¼ of se'n 18 in township 7 N., R. 9 E.; the same being known as the Island place, near Marion, in said county of Crittenden, and containing, by estimation, some twelve or fifteen hundred acres of land; it being the intention to convey all the lands owned by said Scruggs in said Island, whether the same be particularly described herein or not. The land is estimated to be worth thirty thousand dollars. To have and to hold said land, every part thereof, together with all and singular the appurtenances thereunto, unto him, the said Saunders, his heirs and assigns, forever. But this deed is made however in trust for the following uses, purposes, and considerations; that is to say, that, whereas, John W. Scruggs is justly indebted to the late firm of Scruggs, Donegan & Co., of New Orleans, in the sum of about fifty-one thousand dollars,
131 on account of advances, the payment of which he, said Scruggs, desires to secure and make certain: Now, therefore, to the end that equal justice may be done and extend' to the said parties in interest, it is understood and agreed that the said trustee shall have full power and authority upon the request of said , & and with the advice and consent of said Scruggs, to sell said lands at either private or public sale, upon such terms as said trustee (with the advice of said Scruggs, and said creditors, or their agent) may think most beneficial to all parties interested; but if the sale be made at public outcry, then the same shall be made at the door of the court-house, in said town of Ma-

rion, (or at the county-seat of said county of Crittenden,) after thirty days' notice of the time and term' of sale being given in some newspaper printed in Memphis, Tennessee; and the proceeds of sale to be equitably between the said creditors to the extent of their respective claims, this deed being made wholly for the benefit of the creditors of said late firm of Scruggs, Donegan & Co., and should there be a balance after first deducting commissions and expenses pay and *and*
132 incidental to this trust.

In testimony whereof I, the said Oliver P. Lyles, as attorney as aforesaid, *and* have hereunto set my hand and seal, at Marion, on the above date.

O. P. LYLES,
Atty. in fact for John W. Scruggs.

STATE OF ARKANSAS,
County of Crittenden:

Be it remembered that before me, John Swepston, clerk of the circuit court in and for said county, on this day came and personally appeared Oliver P. Lyles, with whom I am personally acquainted, and know him to be the same person named in deed, who executed the foregoing deed of conveyance as attorney in fact for John W. Scruggs, and acknowledged the execution of the same, on this day of its date, for the uses, purposes, and consideration therein set forth and expressed.

In testimony whereof I have hereunto set my hand and seal of office at Marion the 7th day of February, 1866.

[SEAL.] JOHN SWEPSTON, *Clerk.*

133 STATE OF ARKANSAS,
County of Crittenden:

I, John Swepston, clerk of the circuit court and ex-officio recorder in and for said county, do hereby certify that the above written and foregoing is a true, full, and complete copy of the original filed for record on this the 7th day of February, 1866, and duly recorded on this 8th day of Feb., 1866, in my office in book R, page 428.

JOHN SWEPSTON,
Clerk, Recorder.

STATE OF ARKANSAS,
County of Crittenden:

I, John Swepston, county clerk and ex-officio recorder within and for the county and State aforesaid, do hereby certify that the foregoing is a true copy from the record of a trust-deed from O. P. Lyles, attorney in fact for John W. Scruggs, to F. A. Sanders, as appears of record in my office in book R, page 428.

Witness my hand and official seal this 25th day of July, 1871.

JOHN SWEPSTON, *Clerk.*

134 I, Thom. L. Dougherty, judge of the county & probate court of Crittenden County, State of Arkansas, do hereby certify that John Swepston, whose name is *as*signed to the foregoing certificate, is and was at the time of the signing thereof the lawful and acting clerk of county court of said Crittenden County, and that all his official acts are entitled to full faith and credit; and that he is the proper officer to make the foregoing authentication, and that the same is in due form.

In testimony whereof I have hereunto set my hand & seal this the 4th day of August, 1871.

THOS. L. DOUGHERTY, [SEAL.]
County and Probate Judge.

I, John Swepson, clerk of the county court of Crittenden County, State of Arkansas, do hereby certify that Thos. L. Dougherty, whose name is assigned to the foregoing certificate, is and was at the time of the signing thereof judge of the county & probate court of said Crittenden County, State of Arkansas, and the presiding officer of said court, duly commissioned and qualified as such, and all of his official acts are entitled to full faith & credit.

Witness my hand and official seal this 4th day of August, 1871.

[SEAL.] JOHN SWEPSTON, *Clerk.*

135 Be it remembered that at a court begun and held at the court-house in the county of Crittenden and State of Arkansas, on Monday, the 5th day of November, A. D. 1866, the same being the first Monday of said month, and the time fixed by law for holding the circuit court of said county, was present and presiding the honorable James W. Hanks, judge of said court; was also present and in due attendance John Grooms, sheriff of said county, and Josiah F. Earle, clerk of said court; and the court being duly opened according to law, the following proceedings were had, to wit:

Circuit court record, Crittenden County, Ark., November 7th, 1866.

WILLIAM PETREKIN, PLFF., *vs.* J. W. SCRUGGS ET AL., DEFT. } 435.

Now on this day came the parties herein, by their attorneys, and the defendants enter their plea of general issue, to which plaintiff takes issue, and thereupon this cause is continued, with leave to plead further at next term.

Be it remembered that at a circuit court begun and held at the
136 court-house in the county of Crittenden, in the State of Arkansas, on Monday, the 13th day of May, A. D. 1867, was present and presiding the honorable James W. Hanks, judge of said court; in due attendance John F. Grooms, high sheriff of said county, and Josiah F. Earle, clerk of said court; and the court being duly opened, according to law, the following proceedings were had, to wit:

Law record, Crittenden County, Arkansas, May 13th, 1867.

WILLIAM PETREKIN, PLFF., *vs.* JOHN W. SCRUGGS & JAMES H. DONEGAN, defts.

Now on this day came the defendants in this cause, by attorney, and filed their motion to quash the proof of publication made in this cause.

Law record, Crittenden County, Arkansas, May 14, 1867.

WM. PETREKIN, PLFF., *vs.* J. W. SCRUGGS & JAMES H. DONEGAN, defts.

137 Now on this day came the parties herein, by attorney, and the defendant withdraws the motion to quash proof of publication heretofore filed herein.

Law record, Crittenden County, Arkansas, May 1st, 1867.

WILLIAM PETREKIN, PLFF.,
vs.
JOHN W. SCRUGGS & JAMES H. DONEGAN, defts.

Now on this day came the parties herein, by their attorneys, and the defendants files four pleas in bar to plaintiff's action, to which plaintiff interposes his replication and takes issue to the first and second of said pleas and demurs to 3d & 4 pleas; and thereupon the said demurrer is argued and submitted to the court and sustained; and thereupon the defendants amend their pleas heretofore filed herein; and thereupon came the plaintiff and interpose his replication and takes issue to said amended pleas, and the defendant files his motion for a continuance of this cause until the next term of this court.

Law record, Crittenden County, Arkansas, May 20, 1867.

138 WILLIAM S. PETREKIN, PLFF.,
vs.
JOHN W. SCRUGGS & JAMES H. DONEGAN, DEFTS.

Now on this day came the parties in this cause, by their attorneys, and thereupon the pleas heretofore filed in this cause are withdrawn; and thereupon the plaintiff files the original instrument sued herein; and thereupon the death of James H. Donegan is su'gested and not denied, and as to him this cause is discontinued. And the defendant, John W. Scruggs, saying nothing further in bar preclusion of said plaintiff's demurrer:

On motion, nihil dicit is rendered herein against said defendant, John W. Scruggs, and it appearing to the satisfaction of the court that the damages in this cause are liquidated and the said defendant owes to and is indebted to the said plaintiff in the sum of eight thousand nine hundred and twenty-five dollars for his damages by him sustained by reason of the non-performance of the promises and undertakings in said plaintiff's declaration specified:

It is therefore considered by the court that the plaintiff do have
139 and recover of and from the said defendant the said sum of eight thousand nine hundred and twenty-five dollars, the damages sustained as aforesaid, together with interest on said damages at the rate of six per centum per annum from the rendition of this judgment until paid, besides all his costs in this behalf paid, laid out, and expended, upon the said plaintiff filing the bond required by law. Execution may issue, to be levied upon the lands heretofore levied upon by the writ of attachment issued in this cause.

140 [Culver, Page & Hoyne, stationers, Memphis, Tenn.]

Execution and fee bill.

Copy of the original.

STATE OF ARKANSAS,
County of Crittenden, ss:

The State of Arkansas to the sheriff of the county of Crittenden, greeting:

Whereas William S. Petrekin, on the 20th day of May, in the year of our Lord one thousand eight hundred and sixty-seven, at our circuit

court of Crittenden County, hath recovered against John W. Scruggs eight thousand nine hundred and twenty-five dollars for his damages sustained by reason of non-performance of the promises and undertakings in plaintiff's declaration specified, the sum of dollars, which were adjudged to *his* for his damages, together with the sum of eleven dollars for his costs sustained in said suit:

You are therefore commanded that of the goods and chattels,
141 lands and tenements, of the said John W. Scruggs beretofore levied upon by the writ of attachment issued in said cause, you cause to be made the damages, together with the costs aforesaid, so that you have the said damages and costs aforesaid before our said circuit court on the second day of our next May term, A. D. 1868; and do you then and there certify how you have executed this writ.

In testimony whereof I, Josiah F. Earle, clerk of said circuit court, have hereunto set my hand and affixed the seal of such court this 26th day of March, A. D. 1868.

[SEAL.] J. F. EARLE, *Clerk.*

This execution was levied on the 31 March, 1868, and the land was bought by J. J. Donegan.

JOHN T. GROOMS, *Shff.*,
By W. P. BELLOWS, *Depty.*

142 STATE OF ARKANSAS,
County of Crittenden:

I, John T. Grooms, sheriff of said county, do certify that the annexed fi're facias came to hand on the 31 day of March, 1868, *at* 31 *day of March, A. D.* 1868, at 2 o'clock p. m. of said day, and I executed the same by levying upon the following lands lying in said county, to wit: S. ½ N. W. fl. ¼ sec. 13; S. E. ¼ sec. 13; N. fr. ½ sec. 24, township seven north, range 8 east; S. ½ N. E. ¼ sec. 13; W. ½ sec. 18; S. W. ½ N. E. ¼ sec. 18; W. ½ S. E. ¼ sec. 18; S. E. ¼ S. E. ¼ sec. 18; S. E. ¼ N. E. ¼ sec. 18; W. ½ sec. 19, T. 7 N. base-line, range 9 east, 5 principal meridian, as the property of defendants, and having advertised that I would sell the same to satisfy said execution, I did on Monday, the eleventh day of May, 1868, expose the same for sale to the highest bidder for cash. Whereupon James J. Donegan bid and offered to pay the sum of three thousand dollars for the same, and he being the best and last bidder therefor, the same was stricken off to him, and he declared to be the purchaser thereof, and he having paid the same to me I paid
143 off all costs and commissions and ballance I have paid to plaintiff's attorney; and the said James J. Donegan having demanded a deed of me, I have executed and delivered to him a deed for said lands according to law.

Given under my hand this 11 May, 1868.

JOHN T. GROOMS, *Sheriff*,
By W. P. BELLOWS, *D. C.*

STATE OF ARKANSAS,
County of Crittenden:

I, John Swepston, county clerk within and for the county and State aforesaid, do hereby certify that the foregoing is a true copy from the record of the proceedings had and done in the case of W. S. Petrikin vs. J. W. Scruggs, in the Crittenden circuit court, and also a copy of all the papers that could be found in said case; and I further certify that a part of the record in said cause has been lost or mislaid, & diligent

search has been made for the lost papers, and that they cannot be found in this office.

Witness my hand and official seal this 27th day of July, 1871.

JOHN S. SWEPSTON, *Clerk*,
By W. W. SWEPSTON, *D. C.*

144 I, Marshall L. Stephenson, judge of the circuit court of Crittenden County, State of Arkansas, do hereby certify that John Swepston is, and was at the time of the signing of the foregoing attestation, the lawful and acting clerk of the circuit court of said Crittenden county, State of Arkansas, and that all of his official acts as such are entitled to full faith & credit; and I further hereby certify that the foregoing attestation is in due form.

In testimony whereof I have hereunto set my hand & seal this the 16th day of August, 1871.

MARSHALL L. STEPHENSON, [SEAL.]
Judge.

145 *Transfer of lease by John W. Scruggs, of Huntsville, Ala., to Narcissa Scruggs, of Huntsville, Ala., May 1st, 1869.*

John W. Scruggs' deed to Narcissa Scruggs.

This indenture, made the 1st day of May, A. D. 1867, between John W. Scruggs, of the first part, and Narcissa Scruggs, of the second part, witnesseth, that the said party of the first part, for and in the consideration of the sum of twenty-five thousand dollars, to him in hand paid by the said party of the second part, the receipt whereof is acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey to party of the second part, her heirs and assigns, all his right, title, & interest in and to that certain tract or parcel of land, situated in the county of Tishomingo and State of Mississippi, known and described as follows:

A certain lot of ground situated in the town of Corinth, in the aforesaid county and State, the same on which stood formerly the building known as the Tishomingo Hotel, and now occupied by the railroad hotel, known as the Scruggs House, together with appurtenances to said premises belonging, and all estate, title, and interest, both at law and in equity, of the party of the first part in the same; to have and to hold the said granted premises with the appurtenances, unto the party of the second part, her heirs and assigns forever. And the said party
146 of the first part, for his heirs, executors, and administrators, does hereby covenant and agree with the said party of the second part, her heirs and assigns, that the said party of the first part shall forever warrant and defend the title to the said premises unto the party of the second part, her heirs and assigns, against the claim of all persons lawfully claiming the same or any part thereof, except on account of taxes due from and after the first day of January, A. D. 1867.

In witness whereof the said part of the first part ha hereunto set hand and seal the day and year first above written.

JOHN W. SCRUGGS. [L. S.]
[L. S.]

THE STATE OF MISSISSIPPI,
County of Tishomingo:

Personally appeared before me, H. Mask, a justice of the peace for said

county, the within-named John W. Scruggs, who acknowledged that he signed, sealed, and delivered the foregoing deed on the day and year therein mentioned as his act and deed.

Given under my hand and seal this sixteenth day of October, A. D. 1867.

H. MASK, [L. S.]
Mayor of Corinth, &c., &c.

THE STATE OF MISSISSIPPI,
County of Tishomingo:

147 Personally appeared before me , of the said county, the within-named , wife of the said , who, in a private examination, separate and apart from her husband, acknowledged that she signed, sealed, and delivered the foregoing deed on the day and year therein mentioned, as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

Given under my hand and seal this day of , A. D. 186 .

[L. S.]

THE STATE OF MISSISSIPPI,
County of Tishomingo:

I, W. Y. Barker, clerk of the probate court of the said county, certify that the foregoing deed was received here for record on the 4 day of January, A. D. 1868, and has been duly recorded by me in deed-book AA, page 139.

Given under my hand and official seal at office, Jacinto, Mississippi, this 6 day of January, A. D. 1868.

W. Y. BAKER, *Clerk.*

STATE OF MISSISSIPPI,
Alcorn County:

I, R. J. Fleming, clerk of the chancery court of said county, (and custodian of the records, books, papers, &c., of old Tishomingo County,) do hereby certify that the within is a true copy of the deed from John W. Scruggs to Narcissa Scruggs, as the same appears of record in my office.

Witness my hand and the seal of said court at office, Corinth, Miss., this 1st day of April, A. D. 1871.

R. J. FLEMING, *Clerk.*

148 STATE OF ALABAMA,
Madison County:

PROBATE COURT, *August* 18, 1852.

It appearing to the court that Samuel Ragland, late of said county, deceased, died intestate, and Samuel J. Ragland here applying for letters of administration on the estate of said decedent:

It is ordered by the court that he give bond and security in the penal sum of two hundred and fifty thousand dollars, conditioned as required by law, and the said Samuel J. Ragland, together with Nicholas Davis, Frederick W. Bynum, & Arthur C. Barton, his securities, who are approved by the court, having entered into bond in the penal sum aforesaid, conditioned as aforesaid, and taken the oath prescribed by law:

It is ordered by the court that letters of administration on the estate of said decedent be issued to him accordingly.

STATE OF ALABAMA,
Madison County :

I, Lewis W. Douglass, judge of the court of probate for said county, do hereby certify that the foregoing is a full and true transcript of the order of appointment of Samuel J. Ragland, as administrator of
149 the estate of Samuel Ragland, deceased, on the records of said court in my office.

Given under my hand and seal of office this 21st day of November, 1871.

[SEAL.] LEWIS W. DOUGLASS,
Judge P. C.

150 The final settlement and allowance of the account of Samuel D. Weakley, submitted by him as the final settlement of his deceased brother James H. Weakley's administration of William Weakley' estate. Came said Samuel D. Weakley and moved the court to take up said settlement; when the court proce'ded to the examination of said account to state, audit, and report the same for allowance, and the court being satisfied that notice by publication in the Florence Gazette has been given as the statute requires, that is, that said notice was inserted in said paper three successive weeks prior to this term of the court, and it further appearing from the affidavit of the surviving administrator that the children and heirs are all of full age and that none of them have filed any exceptions to said account as reported for allowance; it is therefore ordered, adjudged, and decreed by the court that said account as reported be allowed and recorded as the final settlement of said Samuel D. Weakley & for his brother, James H. Weakley, administrator of said William Weakley's estate. From said account it appears that said administrator received on account of said estate, of principal and interest, being proceeds of sale of personal property and notes due in-
151 testate at the time of his death, the sum of twenty thousand three hundred and forty-five $\frac{34}{100}$ dollars, and has distributed in the payment of debts including cost of administration, and the sum of twenty-seven hundred and fifty dollars advanced to each of the heirs entitled to said estate, making in the aggregate so distributed the sum of twenty thousand three hundred and eighty-nine $\frac{34}{100}$ dollars, being an excess over and above receipts of the sum of forty-four dollars. It is further ordered that said administrator, Samuel D. Weakley, be henceforth discharged from the administration of said estate.

THE STATE OF ALABAMA,
Lauderdale County :

I, T. T. Allington, judge of probate within and for said county, hereby certify that the above transcript is a true and correct copy from the records of my office, " Minute docket A," page 434.

Given under my hand and seal of office at Florence this 22nd day of November, 1871.

T. T. ALLINGTON,
Proba'e Judge.

Clerk fee, $2.50.

152 *Debts proved and allowed.*

IN THE MATTER OF JOHN W. SCRUGGS, BANKrupt, before Joseph W. Burke, esq., register.

In the district court of the United States, northern district of Alabama.

No.	Filed.	Creditor.	Residence.	Amount.
1	July 9	I. T. Gee, (admr. S. B. Gee)	Selma, Ala	
2	" 10		Huntsville, Ala	1,412 00
3	Aug. 3	Jno. W. Hancock	" "	7,667 13
4		I. R. Blunt, (sur. ex. W. T. Blunt)	" "	2,025 37
5	Sept. 19	Frank Martin	" "	410 69
6		Solomon Schwab	Cleveland, Ohio	3,120 00
7		R. Hustien	Huntsville, Ala	63 00
8		R. Hustien	" "	79 25
9		G. P. Bierne, (admr.)	" "	73,751 98
10	" 26	I. R. Blunt, (suv. partn.)	" "	553 04
11		I. O. Kelly, (exr. D. O. Kelly)		
12	Nov. 3	I. W. Grayson, (adm. Allison)	Huntsville, Ala	4,284 00
13		W. W. Garth, exr.	" "	7,350 00
14		S D. Cabaniss, (exr. S. Townsend)	" "	5,221 20
15		H. G., (cash. People's Bk.)	Charleston, S. C	25,935 67
16		Geo. M. Everhart	Louisville, Ky	14,000 00
17	" 21	David L. Moore	Huntsville, Ala	2,800 00
18	1869.	Reuben Chapman	" "	3,423 85
19	Jan'y 6	Elijah Peal	New Orleans, La	6,653 00
20	"	R. S. Spragins, exr.	Madison Co., Ala	2,618 00
21	Feb'y 19	M. K. Taylor, (adm. Nancy Morris.)	Huntsville, Ala	2,175 00
22		M. K. Taylor adm.	" "	2,096 65
23		M. K. Taylor, (adm. M. A. Lewis)	" "	4,868 50
153 24		M. K. Taylor, (adm. Wm. H. Jones.)	Huntsville, Ala	1,000 00
25	M'ch 29	R. W. Walker, (recv. in chancery)	" "	11,719 32
26	Ap'l 20	M. K. Taylor, adm., &c.	" "	1,995 05
27	June 15	W. H. Echols (adm. W. Echols)	" "	4,671 96
28	July 22 1871.	Geo. W. Neal	" "	3,992 89
29	Oct. 24	Jnth. Latham, (adm. Geo. Houston)	Jackson Co., Ala	2,123 80

154 HUMES, ASSIGNEE,
vs.
NARCISSA SCRUGGS.

Memorandum of testimony of defendant.

(1.) Copy deed of Scruggs to Narcissa Scruggs.

(2.) Transcript of Madison chancery court in case of Narcissa H. Scruggs, by her next friend, Laurence H. Scruggs, vs. John W. Scruggs.

(3.) Transcript of Madison chancery court in case of Jones et al. vs.

(4.) Depositions of defendant Marcissa Scruggs, M. A. Spotswood, S. S. Darwin, Mills Jenkins, Zebulun P. Davis, Joseph Martin, William Dickow, Joseph C. Bradley, Thomas S. McCalley, Robert W. Coltart, Robert B. Wilson.

155 At a court of chancery held for the twenty-ninth district, in the northern chancery division of the State of Alabama, which district is composed of the county of Madison, at the court-house in the

city of Huntsville, on the first Monday after *after* the fourth Monday in November, being the second day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The honorable S. K. McSpadden, chancellor of the northern division of the State of Alabama.

NARCISSA SCRUGGS, BY NEXT FRIEND, LAURENCE H. SCRUGGS,
vs.
JOHN W. SCRUGGS. } 708.

Be it remembered that heretofore to wit, on the eleventh day of November, in the year of our Lord one thousand eight hundred and sixty-seven, was filed in the office of the register of the twenty-ninth district, in the northern chancery division of the State of Alabama, the bill of complaint of Narcissa Scruggs suing by her next friend, Laurence H. Scruggs, complainant, against John W. Scruggs, defendant, in the words and figures following, to wit:

156 To the Hon. S. K. McSpadden, chancellor of the northern chancery division of Alabama, holding court in the city of Huntsville, in & for the 29th district of the said division:

The bill of complaint of Narcissa Scruggs, wife of John W. Scruggs, of Huntsville, Madison County, & State of Alabama, who sues by her next friend, Laurence H. Scruggs, exhibited against John W. Scruggs, all of the said county & State, complaining, says:

Paragraph 1. That complainant, in the year 1843, intermarried with John W. Scruggs; that her grandfather, Samuel Weakley, of Nashville, Tennessee, died in the year 1835, and that amongst other property which she inherited from him (her mother being then dead) was a quarter section of land, lying in the county of Panola, & State of Mississippi, and known as section 33, in township 9, and range 8. That in the year 1852, her husband, the said John W. Scruggs, she uniting in the deed on his request, sold the said lands for the sum of three thousand and six hundred dollars, by Armstrong & Raney, land agents for said county & State.

157 That her uncle, William Weakley, died in the year 1853, leaving no wife nor children, nor descendants of such intestate, complainant being one of the heirs at law of the said William.

That Samuel D. Weakley, of the county of Lauderdale, Alabama, was the administrator of his estate, and that as said administrator he paid to John W. Scruggs, her husband, about the year 1854, on her distributive share of the said estate, the sum of twenty-seven hundred and fifty dollars.

. That about the year 1853 complainant obtained, as a prize in a raffle, wherein she had a chance, a fine carriage, which was sold to Dr. Haywood Jones, of Limestone County, Alabama, just after obtaining the same, for the sum of one thousand and five hundred dollars, the money for which her husband received.

That in consideration of the care & trouble which complainant had with the children of George Cox in her family, in which they resided for some time, (& being relations of hers, her husband made no charge for board,) about the year 1854 the said George Cox presented her with the sum of five hundred dollars.

158 That all these sums of money were placed in the hands of her husband, the said defendant, and were used by him in his general business, & blended with his individual capital.

That in the year 1850 the said defendant purchased of Samuel Ragland a tract of land known as the race-course tract, lying west of the city of Huntsville, and between the Pulaski and Athens roads, and known and described as follows, (viz:) All that part of the southwest fourth of section thirty-five, in township 3, and range 1, west of the basis meridian at Huntsville, that lies on the *on the* north side of the Athens road; also another tract, described as follows, (viz:) Beginning at Henry Bibb's corner-stake in the half sectional line of section 35, in township 3, & range 1, west; thence along said line north, 7 degrees west 20 chains & 50 links to a stake on the west side of the road; thence along said road south 33¼ degrees east 21 chains and 66 links to a stake in Bibb's line; thence along said line south 76¾ degrees west 9 chains & 63 links to the beginning corner, containing nine $\frac{81}{100}$ acres, except
159 so much of said last-named tract as was conveyed by Neal & Biddle to John Hagey, by deed of August 14, 1821.

That on the 8' day of January, 1863, defendant (complainant uniting in the deed) sold and conveyed to Joseph Martin, of the city of Huntsville, six acres & $\frac{92}{100}$ of the land above, for three thousand & three hundred dollars. Said deed is recorded in deed-book D. D., and the same is hereby referred to as Exhibit N, & prayed to be taken as a proper part of this bill.

And that defendant (complainant joining in said deed at his request) sold to James H. Scruggs, of the city of Huntsville, another portion of the said race-course tract, purchased with her money as aforesaid, for & in consideration of the sum of seven thousand and six hundred dollars. The said James H. Scruggs afterwards sold the said lands to Dr. James A. Beasley.

Complainant is unable to find the deed to said James H. Scruggs for reference as an exhibit.

And that defendant (complainant joining in the deed at his request) sold another portion of the said race-course tract, bought with her money as aforesaid, to Samuel S. Clarke, a citizen of the
160 county of Madison, Alabama, for the sum of one thousand and seven hundred dollars. Complainant is unable to find said deed recorded for reference as an exhibit.

That the whole amount of the several tracts of land sold by defendant as aforesaid to Martin, Scruggs & Clark, carved off from the said race-course tract, amounts in the aggregate to about acres, leaving of the said original tract about acres.

That said original tract of land, bought by defendant of Ragland, was paid for with the money received by her husband, as a part of her distributive share as an heiress of the estate of William Weakley, deceased.

And that the said sums of money which defendant received from James H. Scruggs, Joseph Martin, & Samuel S. Clark, as payments for parts or parcels of the original tract of land, were and are proper parts of her separate estate, being the proceeds of the sale of lands purchased and paid for by money which was her separate estate.

161 That the title of the said lands were not taken in her own name, merely because her husband was a man of wealth, and in circumstances of great prosperity, and complainant never imagined that a time would arrive when her small fortune would be necessary to supply her large family with the necessaries of life.

Paragraph 2. Complainant further shows that on the 14th day of May,

1866, at the request of her husband, and on the express agreement and stipulation for compensation, she executed a release of her contingent right to dower in the following lands, of which her husband was then or had *been* since her intermarriage with him, been seized & possessed, and in which she owned and possessed a right to dower in the event that she should survive her husband, (viz:) to Francis A. Sanders, as trustee for the purposes mentioned, a deed executed by defendant & hence for the 14' day of May, 1866, recorded in deed-book E E, pp. 537, to 541, which is hereby referred to as Exhibit C, and prayed
162 to be taken as a proper part of this bill, one undivided third in the southwest fourth of section seventeen; the north half of section 18; the north of the southeast fourth of section 18; the southwest fourth of section 18; the north half of the northeast fourth of section 19; the northwest fourth of section 19; the west half of the northeast fourth of section 30; the northwest fourth of section 30; the northwest fourth of the southeast fourth of section 30, all in township 3 & range 2, east of the principal meridian in the Batesville land district, in the State of Arkansas, containing twelve hundred & thirty-one & $\frac{96}{100}$ acres.

Also the north half of section 5; the north half of the south half of section 5; fractional section 6; & fractional section 7, in the same township and range, containing sixteen hundred and ninety-eight $\frac{75}{100}$ acres.

Also the west half of section 33; the north half of the northeast fourth of section 36; the southwest fourth of the northeast fourth of section 36; the northwest fourth of section 36; the southeast fourth of
163 the southeast fourth of section 36; the west half of the southeast fourth of section 36, in township 4, north of the base line, & range ten, east of the fifth principal meridian, containing seven hundred and twenty acres.

Also the south half of the southeast fourth of section 18; the south half of the northeast fourth of section 19; the south half of section 19; the west half of section 20; the southeast fourth of section 20 in township 3, north of the base line in range 2 east of the fifth principal meirdian, containing nine hundred and fifty-eight $\frac{28}{100}$ acres.

And also the southwest fourth of section 28; the southeast fourth of the northeast fourth of section 36; and the northeast fourth of the southeast fourth of section 36,in township 4, range 2 east aforesaid; the other undivided two-third parts of the above-described lands were owned at the time by Lawrence B. Sheffey and Joseph Martin, both of the city of Huntsville, Alabama, being tenants in common with defendant therein.

And also in the one undivided third part of a tract of land in the
164 county of Madison, State of Alabama, adjoining the corporation of the city of Huntsville, on the west side thereof, & bounded on the east by the lands of James G. Scott & the lands of the estate of Thomas Leonard, deceased, & the lands of Margaret Moore; on the south by the lands of the estate of Adam Hall, deceased; on the west by the lands of J. J. Donegan and the lands of the estate of Adam Hall, deceased; and on the north by the Athens road, & the half-acre lot of Z. P. Davis, containing in all forty acres. The other two-thirds being owned by the said L. P. Sheffey & Joseph Martin as tenants in common.

And also the following lands owned by defendant in his own right in savoralty situated in the county of Crittenden & State of Arkansas, (viz,) the south half of the northwest fractional quarter of fractional section 13; the north fractional half of section 24, in township 7 north of base-line, range 8 east; the southeast fourth of section 13; the south half of the northeast fourth of section 13, in same township &

165 range; the west half of section 18; the southwest fourth of the northeast fourth, & the west half of the southeast fourth, & the southeast fourth of the southeast fourth of section 18; the north half of section nineteen; the southeast fourth of the northeast fourth of section 18 in the same township and range, being the plantation known as the Island place, near Marion, in the county of Crittenden & State of Arkansas, and estimated to contain about fourteen hundred & fifty acres.

And complainant also, on the same day, released her contingent right to dower in & to about eight hundred acres, sold by her husband to one Caswell B. Derrick, lying in the county of Jackson.

And complainant also, on the same day, released all her contingent right to dower in & to certain lands sold by defendant to Thomas M. Peters in the year 1860, lying & being in the county of Crittenden & State of Arkansas, & known as the northwest fourth of section seventeen; the southwest fourth of section 8; the southwest fourth of the southwest fourth of section 18; the southeast fourth of the southeast fourth
166 of section 18; the southwest fourth of the northeast fourth of section 18; the north half of the west half of the northeast quarter of section 19; and the east half of section 18, containing about eight hundred and forty acres.

Paragraph 3. And complainant further shows that in consideration of the moneys received by defendant, her husband, of her estate hereinbefore stated, and for the further consideration of her release of her contingent right of dower in the lands as hereinbefore stated, stipulated for at the time of the said release, her husband, the said defendant, on the 14th day of May, 1866, bargained, sold, and conveyed to her, by deed recorded in deed-book of the county of Madison, a copy of which is hereby filed as Exhibit P, and prayed to be taken as a proper part of this bill, all that part of the said race-course tract bought by him of the said Samuel Ragland, (except the portions of the said lands sold to Joseph Martin, James H. Scruggs, & James S. Clark, hereinbefore described & carved out of the same,) and described in said deed to complainant as the land on which 'is residence is
167 situated & including & being the tract purchased by *by* him of Samuel Ragland in the year 1850, except fifty-two acres thereof sold by the said John W. Scruggs to James H. Scruggs, Joseph Martin, and Samuel S. Clark, & containing about sixty acres, it being the land conveyed by Richard Pryor & wife to John Blevins & wife, to John R. H. Acklen, Samuel Breck, & Alexander Erskine, by deed June 13, 1839; & afterwards, on the 3rd June, 1843, conveyed by deed of William Robinson, as sheriff of Madison county, to the said Samuel Ragland, & recorded in deed-book V, page 584, and also by same deed conveyed to her the following household & kitchen furniture, then in the said residence, (viz,) two sofas, two rocking-chairs, 6 hair-bottom chairs, 1 centre-table, 1 metal clock, 1 dining-table, 1 sideboard, 1 dozen dining-room chairs, 2 wardrobes, 2 bedsteads & beds, 3 mattresses, 2 bureaus, 3 lounges, 1 hall rack, 6 pairs of blankets, & 3 carpets.

And defendant by the same deed also conveyed to her his one-third interest in the profits of what is known as the Tishamingo Hotel, in the town of Corinth & State of Mississippi, under and by virtue of
168 a contract made and entered into on the 22' day of August, 1865, between the said John W. Scruggs & one William H. Scruggs for a term of five years, the lot of ground upon which said hotel is built, upon the covenant & understanding of the said William H. Scruggs to build the same, which said contract was so modified by a

written endorsement thereon on the 1st day of May, 1866, as to transfer & assign to the said John W. Scruggs one-third of the profits of the said hotel, during the term of his lease as aforesaid.

All the said property was conveyed to the sole and separate use of complainant as her sole and separate property without marital restrictions, limitations, or encumbrance, & surrendering to complainant all rights of defendant, as tenant by c'urtesy, to the said real estate.

Paragraph 4. And complainant says that the consideration moving from her was ample, and valuable, and sufficient for the property conveyed to her by the said deed from defendant. That the land conveyed
was only a part of a larger tract purchased and paid for with
169 money which was her separate estate, and the portions of the same
sold off to Martin, Scruggs, & Clark, when converted into the sums of money received by defendant for the same, was still also her separate estate. And that the sums of money received from Cox & Jones were the same.

That the lands aforesaid in which she released her contingent right of dower comprise much of the most valuable lands in the State of Arkansas; and that the sum of two hundred thousand dollars is not an extravagant estimate of their value; and that the property conveyed to her is not a full value for the dower alone, estimating it according to her age & fine health.

Paragraph 5. Complainant prays that by a decree of the court your honor would ratify and confirm the said conveyance and vest the title to the same in her husband, John W. Scruggs, as trustee, to have and to hold the same for her sole & separate use, & free from all marital control or incidents. And that such deed or conveyance as may be necessary to effect, may be ordered. To the end therefore that the said
John W. Scruggs may shew, if he can, why complainant should
170 not have the relief which she seeks, she prays that a subpœna
may issue, properly tested & issued, for the purpose of making him a party defendant to this bill, and that he may be required full, true, and perfect answers to make to all & singular the matters & allegations of this bill as by *orte* he may be directed, and for such & further relief as the facts of the case may allow according to the rules of equity.

D. P. LEWIS,
Sols. for Complts.

NOTE.—Defendant is required to answer all the paragraphs of this bill from 1 to 5, inclusive.

D. P. LEWIS,
Sol. for Compl't.

EXHIBIT P.

JOHN W. SCRUGGS *to* NARCISSA SCRUGGS. } Deed.

THE STATE OF ALABAMA,
Madison County:

Whereas I, John W. Scruggs, of the county and State aforesaid, in the year 1852 received as the separate estate of my wife, under the laws of the State of Alabama, the sum of thirty-two hundred dollars.

And whereas in the year 1853 I sold property belonging to her

The separate estate, under the laws of Alabama, for the sum of thirthe pr teen hundred dollars.

May,d whereas in the year 1858 I was seized and possessed of a certain t of land, situate in the county of Jackson, in said State, consisting of about eight hundred acres, in which my said wife was dow'able; and whereas said lands was afterwards sold by me to one Caswell B. Derrick, to whom I executed my bond to make title on payment of the purchase-money; and whereas my said wife has, by written instrument of this date executed contemporaneously herewith, relinquished to the said Caswell B. Derrick her dower interest in the lands aforesaid.

And whereas in the year 1860 I was seized and possessed of the following lands, situate in the county of Crittenden, in the State of Arkansas, viz, the northwest ¼ of section 17; the southwest ¼ of section 8; the southwest quarter of the southeast ¼ of section 18; the southeast quarter of the southeast ¼ of section 18; the southwest ¼ of the northeas' ¼ of section 18; the north half of the west ½ of the northeast ¼ of section 19; and the east ½ of section 18, township —, of range —;
172 containing about eight hundred and forty acres. And whereas I afterwards sold said lands to one Thomas M. Peters, to whom I executed my bond to make title to said lands on payment of the purchase-money; and whereas my said wife has, by written instrument of this date executed contemporaneously herewith, relinquished to the said Thomas M. Peters her dower interest, she being thereof dowable in the lands aforesaid.

And whereas I have by deed of even date with this instrument and of contemporaneous execution, conveyed to one Francis A. Sanders, of the city of Memphis, in the State of Tennessee, certain real estate of which I am seized and possessed, therein particularly described, to which said deed reference is here made for the purpose of ascertaining its consideration, and the amount, character, description, and location of the property thereby conveyed. And whereas my wife joined me in the execution thereof, and thereby relinquished unto the said Francis A. Sanders, and to all persons who may claim under him, by virtue of any of the
173 stipulations of the deed last aforesaid, her dower interest in the real estate thereby conveyed.

And whereas the said several relinquishments of dower aforesaid were made by my wife upon my express promise and agreement to convey to her, by deed executed contemporaneously therewith, to her sole and separate use, and as her sole and separate estate, the real estate and other property and interests hereinafter particularly described, in consideration of said several relinquishments of dower aforesaid, and of said several sums of money so received by me as aforesaid, as her separate property: Now, therefore, in consideration of the premises and of the promise and agreement aforesaid, and of the several sums of money so received by me as aforesaid, and of the several relinquishments of dower as aforesaid, I, John W. Scruggs, do hereby grant, bargain, and sell, alien, enfeoff, & convey unto my said wife, Narcissa Scruggs, to her sole and separate use, and as her sole and separate estate, the following-described real estate adjoining the city of Huntsville, in the county of Madison aforesaid, whereon my residence
174 is situated, and including the same, being the tract of land purchased by the said John W. Scruggs of Samuel Ragland, in the year 1850, except fifty-two acres thereof sold by the said John W. Scruggs to James H. Scruggs, Joseph Martin, and Samuel S. Clark, and containing about sixty acres. It being the land conveyed by Richard Pryor & wife & John Blevins & wife to John R. H. Acklen, Samuel Breck, &

Alexander Erskine, by deed of date June 13, 1839, and recorded in transbook R, page 277, in the office of the probate court of the coun the Madison aforesaid, and afterwards, on the 3rd June, 1843, conveye deed of that date by William Robinson, as sheriff of said county Madison, to the said Samuel Ragland, and recorded in deed-book V, page 384, in the office of the probate court aforesaid.

And I, the said John W. Scruggs, in consideration of the premises and agreement aforesaid, and of the several sums of money so received by me as aforesaid, and of the several relinquishments of dower as aforesaid, do hereby bargain, sell, and deliver unto the said Narcissa
175 Scruggs the following-described household & kitchen furniture in the residence and on the premises aforesaid, that is to say: Two sofas, two rocking-chairs, 6 hair-bottom chairs, 1 centre table, 1 mantle clock, 1 dining table, 1 sideboard, 1 dozen dining-room chairs, 2 wardrobes, 2 *two* bedsteads & beds, 3 mattrasses, 2 bureaus, 3 lounges, 1 hat-rack, & six pair of blankets, & 3 carpets. And the said John W. Scruggs, in further consideration of the promise and agreement aforesaid, and of the several sums of money so received by me as aforesaid, and of the several relinquishments of dower as aforesaid, do hereby transfer and assign unto my wife, the said Narcissa Scruggs, my one-third interest in the profits of what is known as the Tishamingo Hotel, in the town of Corinth, in the State of Mississippi, under and by virtue of a contract made and entered into on the 22nd day of August, 1865, between the said John W. Scruggs and one William H. Scruggs, for a term of five years, the lot of ground whereon said hotel is built, upon the covenant and understanding of the said William H. Scruggs to build the same, which said contract was on the 1st day of May, 1866, by written endorsement thereon made, so modified by the said William H.
176 Scruggs as to transfer and assign to the said John W. Scruggs one-third of the profits of the said hotel, during the term of his lease aforesaid, and the personal property aforesaid, and all the rights, interest, and profits of the contract of lease aforesaid, with the issues, incidents, and income thereof, to the sole and separate use and as the sole and separate property of the said Narcissa Scruggs, without marital restrictions, limitations, or incumbrance. And *I*, the said John W. Scruggs hereby releases, remits, and surrenders unto the said Narcissa Scruggs, all his rights as tenant by *the* courtesy of the real estate aforesaid.

In witness whereof the said John W. Scruggs hereunto sets his hand and affixes his seal at Huntsville, Alabama, this the 14th day of May, 1866.

JOHN W. SCRUGGS. [SEAL.]

[Stamped according to law.]

THE STATE OF ALABAMA,
Madison County:

I, Robert D. Wilson, judge of the probate court of said county & State, hereby certify that John W. Scruggs, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same
177 bears date.

Given under my hand at Huntsville, Alabama, this 14' day of May, 1866.

R. D. WILSON,
Judge P. C.

The foregoing conveyance was delivered into the office of the judge of the probate court of Madison County for registration on the 14' day of May, 1866, and was duly recorded on the same day.

R. D. WILSON,
Judge P. C.

THE STATE OF ALABAMA,
Madison County:

I, James H. Scruggs, judge of the court of probate for said county and State, hereby certify that the foregoing pages contain a full, true, & perfect transcript of a deed of conveyance made by John W. Scruggs to Narcissa Scruggs, as the same appears of record in my office.

Given under my hand & seal of said court of probate, at office in the city of Huntsville, on this 16' day of May, 1867.

[SEAL.]

JAMES H. SCRUGGS,
Judge P. C.

[Stamp.]

178 EXHIBIT C.

JOHN W. SCRUGGS & WIFE *to* JOSEPH MARTIN. } Deed.

This indenture, made this the eighth day of January, in the year one thousand eight hundred and sixty-three, between John W. Scruggs and his wife, Narcissa, of the one part, and Joseph Martin of the other part, all of the county of Madison, in the State of Alabama, witnesseth, that the said John W. Scruggs and his wife, Narcissa, for and in consideration of the sum of three thousand three hundred dollars, to him in hand paid, the receipt whereof is hereby acknowledged, have this day given, granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the said Joseph Martin all that certain parcel of land lying and being in the county of Madison, in the State of Alabama, known and described as beginning at the southwest corner of a fence that divides the land of the said John W. Scruggs and Joseph Martin, at a point where an angle of the road occurs, the bearings respectively bearing north 17° 40′ west, and south 13° 45′ east, continuing along said fence south 79° 25′ west 969 feet 9 inches
179 to a corner; thence north 10° west 333.3 feet to a point in the center of an alley, thence along center of said alley north 80° 48′ east 933 feet, intersects road before mentioned; thence along said road south 17° 40′ west 301 feet to the beginning, containing six acres $\frac{93}{100}$; said lot being situated in the northeast part of the southwest quarter of section thirty-five, in township three, range one west, to have and to hold the above-described parcel of land, with the tenements and appurtenances thereunto belonging, or in any wise appertaining, unto the said Joseph Martin, his heirs, and assigns forever. And the said John W. Scruggs and his wife, Narcissa, for themselves, their heirs, executors, and administrators, do hereby and in consideration of the premises warrant and will forever defend the title to the above-described and hereby granted premises unto the said Joseph Martin, his heirs and assigns forever, from and against themselves and all and every person or persons claiming or holding under them, the said John W. Scruggs and his wife Narcissa, and also against the lawful title, claim, or demand
180 of all and every person or persons whomsoever.

In testimony whereof the said John W. Scruggs and Narcissa, his wife, hereunto subscribe their names and affix their seals the day and year first above written.

JOHN W. SCRUGGS. [SEAL.]
NARCISSA SCRUGGS. [SEAL.]

STATE OF ALABAMA,
Madison County:

I, Robert D. Wilson, a justice of the peace in and for said county, do hereby certify that John W. Scruggs and his wife, Narcissa, whose names are signed to the foregoing conveyance, who are known to me, acknowledged before me on this day that being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand this the 17th day of January, 1863.

R. D. WILSON, *J. P.*

The foregoing conveyance was delivered into the office of the judge of probate of Madison County, in the State of Alabama, for registration on the 17' day of January, 1863, and was duly recorded on the 19th day of January, 1863.

JAMES H. SCRUGGS.
Judge P. C.

181 STATE OF ALABAMA,
Madison County:

I, Lewis M. Douglass, judge of the court of probate for said county, which is a court of record, do hereby certify that the foregoing deed is a correct transcript of the original on record in this court.

Given under my hand at office in the city of Huntsville this 15th day of November, 1871.

LEWIS M. DOUGLASS,
Judge Probate Court.

EXHIBIT N.

JOHN W. SCRUGGS *to* FRANCIS A. SANDERS. } Deed.

STATE OF ALABAMA.
Madison County:

Whereas the undersigned John W. Scruggs, of the county and State aforesaid, is largely indebted to different persons residing in different localities and States, and whereas this indebtedness is individual and partnership indebtedness, being the partnership indebtedness of Scruggs, Donegan & Co.; and whereas he is also largely involved as endorsee for others, and likewise as surety, and as a member of the firm of Scruggs, Donegan & Co., as accepters of bills of exchange; and whereas, owing to the loss or displacement resulting from the present civil
182 war, of explanatory memoranda, schedules, &c., it is impossible for him at this time to state with accuracy the extent of his liabilities, or their character, or to ascertain how much thereof has been remitted by the laches of creditors; and whereas he is anxious to adjust, settle, and discharge, to the extent of his ability, all just claims against him, but is unable at this time, for the reasons above stated, to nominate with accuracy his creditors;

Now, therefore, the premises considered, I, John W. Scruggs, of the county of Madison & State aforesaid, do hereby grant, bargain, and sell, alien, enfeoff, and convey, unto Francis A. Sanders, of the city of Memphis, in the State of Tennessee, my undivided one-third interest, (the remaining two-thirds being owned by Laurence B. Sheffey and Joseph Martin, as tenants in common with myself,) in the following tracts and parcels of land, situate in the Batesville land district, in the State of Arkansas, viz:

The S. W. $\frac{1}{4}$ of section 17, (100 acres;) the north $\frac{1}{2}$ of section 18, (318.15 acres;) the north $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of section 18, (80 acres;) the S. W. $\frac{1}{4}$ of section 18, (158.16 acres; the north $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of section 19, (80 acres;) the N. W. $\frac{1}{4}$ of section 19, (156.89 acres;) the west $\frac{1}{2}$ of N.
183 E. $\frac{1}{4}$ of section 30, (80 acres;) the N. W. $\frac{1}{4}$ of section 30, (158 16 acres;) the N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of section 30, (40 acres;) all in township three of range two east of the fifth principal meridian, containing twelve hundred and thirty-one $\frac{96}{100}$ acres. Also the north $\frac{1}{2}$ of section 5, fractional section 6, and fractional section 7, same township and range, containing sixteen hundred and ninety-eight $\frac{73}{100}$ acres. Also the west half of section 33, (320 acres;) the north $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of section 36, (80 acres;) the S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of section 36, (40 acres;) the N. W. $\frac{1}{4}$ of section 36, (100 acres;) the S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of section 36, (40 acres;) the W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of section 36, (80 acres,) in township 4, north of the base-line, and range two east of the fifth principal meridian, containing seven hundred and twenty acres. Also the south $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of section 18; the south $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section 19; the south half of section 19; the west $\frac{1}{2}$ of section 20; the S. E. $\frac{1}{4}$ of section 20, in township 3, north of the base-line, in range 2 east of the fifth principal meridian, containing nine hundred and fifty-eight $\frac{28}{100}$ acres. And also the S. W. $\frac{1}{4}$ of section 28, the S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of section 36, and the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of section 36, in township 4, range 2 east aforesaid. Also his undivided one-third interest in the following
184 real estate situate in the city of Huntsville, in the county of Madison, in the State of Alabama aforesaid; the remaining two-thirds being owned by the aforesaid Lawrence B. Sheffey and Joseph Martin, as tenants in common with him. A tract of land adjoining the corporation of Huntsville on the west side, bounded on the east by the lands of James G. Scott and the lands of the estate of Thomas Leonard, deceased, and the lands of Margaret Moore; south by the lands of the estate of Adam Hall, deceased; west by the lands of J. J. Donegan, and the lands of the estate of Adam Hall, deceased; and north by the Athens road and the half-acre lot of Z. P. Davis, containing in all forty acres. Also, the following-described real estate, owned by the said John W. Scruggs in his own right, and situate in the county of Crittenden, in the State of Arkansas; that is to say, the south $\frac{1}{2}$ of the northwest fractional $\frac{1}{4}$ of fractional section 13; the north fractional $\frac{1}{2}$ of section 24, in township 7, north of base line, range 8 east; the S. E. $\frac{1}{4}$ of section 13; the south $\frac{1}{2}$ of northeast $\frac{1}{4}$ of section 13, in same township and range; the west $\frac{1}{2}$ of section 18; the southwest $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, and the west $\frac{1}{2}$ of the southeast $\frac{1}{4}$, and the southeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 18;
185 the north $\frac{1}{2}$ of section 19; the southeast $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of section 18, in the same township and range, and containing the plantation known as the "Island Place," near Marion, in the county of Crittenden aforesaid, estimated to contain about seventeen hundred and fifty acres: To have and to hold the same, and every part and parcel thereof, with the hereditaments and appurtenances, unto the said Francis A. Sanders; in trust, nevertheless, and only to and for the

uses, intents, and purposes following; that is to say, to convey the lands aforesaid, in such manner, and at such time, and to such persons, being creditors of, or purchasers from, the said John W. Scruggs, as he, the said John W. Scruggs, shall by instrument of writing hereafter designate, nominate, and appoint; but if such designation, nomination, and appointment is not made by the said John W. Scruggs within twelve months from the date hereof, the said twelve months being reserved for the purpose of ascertaining the extent of his liabilities, the said Sanders shall, with all convenient diligence, sell and dispose of the lands aforesaid, at public or private sale, as he may deem most beneficial to the interests of the creditors of the said John W. Scruggs, and convert the same into money; and with and out of the proceeds of such sales
186 the said Sanders shall first pay and disburse all the just and reasonable expenses, charges, and commissions attending the due execution of these presents, together with a reasonable and lawful compensation for his own services; and with and out of the residue of such sales the said Sanders shall pay and discharge, pari passu, such of the creditors of the said John W. Scruggs as shall have established, by any satisfactory evidence, legally subsisting debts, whether in judgment or otherwise, against him.

And for the better and more effectual execution of these presents, and of the trusts hereby created and reposed, the said John W. Scruggs doth hereby make, constitute, and appoint the said Francis A. Sanders his true and lawful attorney, irrevocable, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which may be necessary in the premises, and to the full execution of the said trust, and for the purposes of said trust to sue, prosecute, and defend and implead for the lands aforesaid, hereby ratifying and confirming whatever the said Francis A. Sanders shall lawfully do in the premises.

And now, and in consideration and because of a deed this day executed by my husband, the aforesaid John W. Scruggs, contempo-
187 raneously with this instrument, by which he conveys to me, to my sole and separate use, and my sole and separate estate, certain property therein particularly set forth and described, and to which said deed reference is here made, as ascertaining the consideration upon which I became a party hereto, I, Narcissa Scruggs, wife of the said John W. Scruggs, do hereby join him in the execution of this deed of conveyance, and do hereby relinquish and acquit unto him, the said Francis A. Sanders, and to all persons who may claim under him, by virtue of any of the stipulations hereof, all my dower, rights, interests, and estates in and to the lands hereinbefore set forth and particularly designated and described.

In witness whereof the said John W. Scruggs & his wife, the said Narcissa Scruggs, have hereunto set their hands and affixed their seals, at Huntsville, Alabama, this the 14th day of May, 1866.

JNO. W. SCRUGGS. [SEAL.]
NARCISSA SCRUGGS. [SEAL.]

THE STATE OF ALABAMA,
Madison County:

I, Robert D. Wilson, judge of the probate court of said county & State, hereby certify that John W. Scruggs and his wife, Narcissa Scruggs, whose names are signed to the foregoing conveyance,
188 and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand, at Huntsville, Alabama, this 14th day of May, 1866.

R. D. WILSON,
Judge P. C.

THE STATE OF ALABAMA,
Madison County, City of Huntsville:

Be it remembered that on this 14th day of May, 1866, before me, Zebulon P. Davis, mayor of the city of Huntsville aforesaid, duly appointed and qualified, personally came and appeared John W. Scruggs, grantor in the above deed, to me personally known, and acknowledged that he voluntarily executed and delivered the foregoing deed for the uses and purposes and considerations therein expressed, and desires the same to be certified. And on the same day and at the same place also personally came before me Narcissa Scruggs, wife of the said John W. Scruggs, and of full age, and to me well known, who, being then by me examined in the absence of her said husband, and the contents of the foregoing deed being by me fully explained to her, she declared that she had of her free will executed the same, for the uses and purposes therein expressed, without compulsion or undue influence of her said husband, and desired the same to be certified.

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In witness whereof I have hereunto set my hand & affixed the seal of office, at Huntsville, Ala., the day & date above.

[SEAL.]

Z. P. DAVIS,
Mayor of Huntsville, Ala.

[Stamped according to law.]

The foregoing deed was delivered into the office of the judge of probate of Madison County, Ala., for registration on the 15 day of April, 1866, and was duly registered on the 16 day of May, 1866.

R. D. WILSON,
Judge P. C.

THE STATE OF ALABAMA,
Madison County:

I, Lewis M. Douglass, judge of the court of probate, (which is a court of record,) do hereby certify that the foregoing eight pages contain a true and correct transcript, as the records of this court shew.

Given under my hand, at office in the city of Huntsville, the 16th day of November, 1871.

LEWIS M. DOUGLASS,
Judge Probate Court.

And afterwards, to wit, on the 11th day of November, 1867, was filed in the office of the register of said chancery district the answer of John W. Scruggs, in the words and figures following, to wit:

In chancery.

The answer of John W. Scruggs to the bill of complaint of Narcissa Scruggs, his wife, filed by her next friend, Lawrence H. Scruggs, in the 29th district of the northern chancery division of the State of Alabama.

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The said respondent, for answer to the said bill of complaint, so far as he is advised that it is material for him to answer, says:

That the statements contained in the first paragraph of the said bill are substantially and, he believes, entirely correct.

The statements in respect to the lands and money alleged to have been received by him from his wife, said complainant, & the several sources whence they were received, the sales of the lands to James H. Scruggs, Martin & Beasley & Clark, by respondent, are therein correctly stated, and the reasons why the title to said lands were not taken in her name are correctly stated.

That complainant's friends remonstrated with him for exercising his judgment in that matter, influenced as he was by the firm confidence in his judgment, based upon the great affluence and wealth which he had achieved at the commencement of our civil dissensions; respondent esteemed himself to be worth over half a million of dollars over every debt which he owed. But his acceptances in his business as cotton-factor, & his own debts, which seemed so insignificant compared with his
191 resources, have left his fortune a wreck.

That the releases of dower made by complainant, and the consideration & motives for which the same was made, and the stipulations and promises by respondent therefore, are correctly stated in the 2nd paragraph of said bill of complaint.

Respondent says that the real estate in which complainant so released her dower for fertility, happiness of location, & intrinsic value is not surpassed in the Southern States, and the value of the dower so released by complainant renders the said real estate of increased worth far surpassing the value of the real estate conveyed to complainant as a consideration for that & her separate estate; that the dower in said lands alone exceeds in value the real estate conveyed to complainant by respondent.

Paragraph 3 of said bill correctly states the agreement entered into between complainant & defendant, the property conveyed by him, & the consideration on which the same was conveyed. And respondent says that the allegations of paragraph 4 *he says* are correct & true.

And respondent submits to such decree as this court shall deem equitable & proper as the facts stated in said bill.

JOHN W. SCRUGGS.

192 And afterwards, to wit, on the third day of December, 1867, being a day of the term of said court begun and held on the first Monday after the fourth Monday in December, 1867, the following order was made:

NARCISSA SCRUGGS
vs. } 708.
JOHN W. SCRUGGS.

Comes the parties, by their solicitors, and on motion it is ordered by the court that publication of the testimony taken in this cause be passed.

And afterwards, to wit, on on the fourth day of December, 1867, being a further day of the same term of said court, the following order was entered, to wit:

NARCISSA SCRUGGS
vs. } 708.
JOHN W. SCRUGGS.

Come the parties, by their solicitors, and the complainant offered as evidence the bill, exhibits thereto, & answer, and the depositions of F.

A. Saunders, James J. Donegan, Martha A. Spotswood, Fred Tate, James H. Scruggs, & Samuel A. Otis, and the cause is submitted for decree upon the bill, exhibits, answers, & proofs.

Complainant's proof.

The State of Alabama to Robert D. Wilson & Robert H. Wilson,
193 of the county of Madison, in the State of Alabama, greeting:

Know you that we, in confidence of your prudence & fidelity, do hereby commission, authorize, and require you to call & cause to come before you, or either of you, at such time & place as you may appoint, Sarah Ann Patteson, Martha Ann Spotswood, Samuel Otis, James J. Donegan, Fred. Tate, James H. Scruggs, as witnesses on the part of the complainant in a cause now pending in our chancery court for the 29th chancery district of the State of Alabama, wherein Narcissa Scruggs, by next friend, is complainant, and John W. Scruggs is defendant; and then, after being duly qualified, diligently examined on the interrogatories of the complainant, and the cross-interrogatories of the defendant hereto annexed, and their depositions so taken, from under your hands and seals, or the hand and seals of either of you, send certified to our said chancery court, at the term thereof to be held at the court-house in Huntsville on the first Monday after the fourth Monday in November, instant, to be read as evidence on the trial of said cause.

Witness Isaiah Dill, register of said court, at office in Huntsville, this 29th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of American Independence the 92nd year.

Teste:

ISAIAH DILL,
Register Ch. Ct.

194 In chancery, 29th district of Alabama.

NARCISSA SCRUGGS, BY NEXT FRIEND, L. H. Scruggs,
vs.
JOHN W. SCRUGGS.

Interrogatories to be propounded to F. A. Saunders, Martha Ann Spotswood, Samuel Otis, James J. Donegan, Fred. Tate, & James H. Scruggs, of the county of Madison, State of Alabama; Samuel D. Weakley of Florence, Alabama, witnesses, whose answers, when taken according to law, will be read as evidence on the trial of the above case for complainant.

1. State whether or not you are acquainted with the parties to the above suit, and how long you have known them.

2. Did you know William Weakley, of Florence, Alabama? State whether he is living or dead. If you say he is dead, please state when he died, and where he was residing when he departed this life.

3. State whether or not Narcissa Scruggs, the complainant in this case, was an heir at law of the said William Weakley.

4. State what amount she received as a distributee of the said estate, and when the same was paid, & by whom. State fully; and, if you know, state how the same was invested.

5. Please state what you know concerning the sale of a fine carriage to Dr. Haywood Jones by complainant. If you know anything of it,

state whose property it was. If you say it was the property of
195 plaintiff, please state how she derived a title to the same. State also the price paid by Dr. Jones for the same, if you know.

7. If you know of any other sums of money or property which defendant obtained of the estate of complainant, or in her right, or by reason of his intermarriage with her, state fully what the sum of money was, or what property it consisted of. Do you know anything of any lands in Mississippi obtained by defendant by reason of his intermarriage with complainant? If so, state how much, and the disposition made of the same, if you can.

To James H. Scruggs & Otis:

8. State, so far as you can, the value of the lands in which complainant released her dower by her agreement with defendant on the 14th day of May, 1866. State the quality of the said lands.

LEWIS & SNODGRASS,
Sols. for Complt.

Complainant hereby nominates & appoints Isaiah Dill, or Robert D. Wilson, Robert H. Wilson, John W. McAlister, or A. J. Rice as commissioners to take the depositions on the above interrogatories.

LEWIS & SNODGRASS,
Sols. for Complt.

Cross-interrogatory filed by defendant:

1. Please state the full amount of the assets that passed into
196 the hands of the administrator of William Weakley, and to whom paid as distributees.

FRED. TATE,
For Deft.

Depositions of James J. Donegan, Sarah A. Patteson, Martha Ann Spotswood, Samuel Otis, James H. Scruggs, Fred. Tate, witnesses, takes, under & by virtue of a commission issued by the register of the 29th chancery district of the State of Alabama, in a cause pending therein between Narcissa Scruggs, by next friend, L. H. Scruggs, complainant, and John W. Scruggs, defendant. The said witnesses, James J. Donegan, Sarah Ann Patteson, Martha Ann Spotswood, Samuel Otis, James H. Scruggs, and Fred. Tate, being of lawful age and to me personally known, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, in their answers to the interrogatories filed by complainant and cross-interrogatory filed by the defendant, depose as follows:

The said witness JAMES J. DONEGAN, in answer to the first interrogatory, says: I am acquainted with the parties to this suit.

Ans. Int. 2. I knew William Weakley, of Florence, Alabama. He is now dead, but I do not know in what year he died. I think he died in Nashville, Tennessee; but Florence, Alabama, was the place of his residence.

197 Ans. Int. 3. Narcissa Scruggs, the complainant in this cause, was an heir at law of said Weakley.

Ans. Int. 4. To the best of my recollection said Narcissa received, as a distributee of said Weakley's estate, about three thousand dollars, which was paid to her within one & two years after the death of said William Weakley by his brother James H. Weakley, who was the administrator of said estate. I don't know how this money was invested.

Ans. Int. 5. I know nothing with reference to the title of said carriage, as to how it was obtained or disposed of.

Ans. Int. 7. Said Narcissa received various sums of money from her grandfather's estate, also from her grandmother's estate, but I don't know whether said amounts of money was received through her father or her husband, which sums amounted to several thousand dollars; the exact amount I don't remember, having kept no memorandum or account of the same. I suppose the legacy from her grandfather's estate was received by her father. In reference to the lands in Mississippi, I know nothing of their value. I think they consisted of several tracts, and I think their title was conveyed by her father, if I am not mistaken, in consideration of moneys which he had received for her from her grandfather's estate. My knowledge of these facts I derived from
198 having heard her father speak of this. I do not know what became of said lands.

Cross-interrogatory 1. Answer. I don't know the amount of assets that passed into the hands of the admr. of William Weakley, dec'd.

JAMES J. DONEGAN.

The witness MARTHA ANN SPOTSWOOD, being next examined, deposes as follows:

Ans. Int. 1. I am acquainted with the parties to this suit; have known them during my life.

Ans. to Int. 2. I knew William Weakley, of Florence, Alabama, who is now dead. He departed this life, to the best of my recollection, during the year 1852. Said Weakley was living, at the time of his death, in Florence, Lauderdale County, Alabama.

Ans. Int. 3. Narcissa Scruggs, the complainant in this cause, was an heir at law of said Weakley.

Ans. Int. 4. The complainant, Narcissa Scruggs, received, as one of the heirs at law of said Weakley, about three thousand dollars or thirty-one hundred dollars, which was paid to her by the administrator, James H. Weakley, soon after the death of said William Weakley, and
199 the same, I think, was invested in a tract of land known as the "race-track." Said track is near the depot of the Memphis & Charleston Railroad, in the city of Huntsville.

Ans. to Int. 5. Said Narcissa did own a fine carriage, which was sold to Dr. Haywood Jones by her. The amount she received for said carriage I don't know, but I know it was the property of complainant. I don't recollect how she acquired the title.

Ans. Int. 7. I have frequently heard complainant speak of having an estate in lands in Mississippi, given by her father, but don't know the quantity or value. Said lands were sold by her husband, but I don't know the amount received therefor. I know of no other moneys or property received by defendant by reason of his marriage with said Narcissa. My knowledge of these facts was received while living in the family of said complainant.

MARTHA A. SPOTSWOOD.

Witness FRED. TATE, being next examined, deposes as follows:

Ans. Int. 1. I do.

Ans. Int. 2. I know nothing.

Ans. Int. 3. I know nothing.

200 Ans. Int. 4. I know nothing.

Ans. Int. 5. Some time in the fall of the year 1854 I was on a

visit to North Alabama, and spent the most of my time with John W. Scruggs & family. While at his house the winning of a carriage in a raffle in the city of Charleston, S. C., was mentioned by Mrs. Scruggs, and it was remarked in the course of the conversation that a chance, with a particular number in the order of throwing, had been purchased by a Mr. Hudson in the name of Mrs. Narcissa Scruggs, and was handed by him to Mr. J. W. Scruggs, who, as was said in the conversation, had himself also purchased a chance in the same raffle. Mr. Hudson, as I learned, presented the chance to Mrs. Scruggs, and upon the termination of the raffle the number in the name of Mrs. Scruggs was the highest thrown and won the carriage. The conversation was more fully impressed upon my mind for the reason that it was also said that the number held by Mr. Scruggs was the next highest thrown, and that either would have won the carriage. Mrs. Scruggs claimed the carriage as her own, being a present from Mr. Hudson. I learned that the carriage had been sold to Dr. Haywood Jones, and heard Mrs. Scruggs say to Mr. Scruggs in the same conversation, "Now you have sold
201 my carriage to Haywood Jones, and where am I to get another?" The carriage was sold for $1,500, to the best of my recollection.

Further affiant saith not.

FRED. TATE.

Witness JAMES H. SCRUGGS, being next examined, deposes as follows:

Interrogatory 1st. Answer. I am well acquainted with the parties, and have known them for thirty years.

Interrogatory 2nd. Answer. I did. He is dead; he died in the year 1851 or 1852; he was living, at the time of his death, at Florence, Alabama.

Interrogatory 3rd. Answer. She was a distributee of said estate.

Interrogatory 4th. Answer. She received about three thousand dollars, in the year 1853, which was paid to her by James J. Donegan as the agent of Samuel Weakley, the administrator of said William Weakley, deceased, which was invested in a tract of land by her husband, John W. Scruggs, known as the race-tract, near the city of Huntsville, and upon which he now resides. The late Benjamin Patteson, the father-in-law of the said John W. Scruggs, had stipulated for the purchase of the said tract of land, but agreed to relinquish his claim upon
202 the consideration that the said John W. Scruggs should make the purchase with the money belonging to his wife, the said Narcissa Scruggs, and take the title-deed in her name; which agreement has never been complied with to my knowledge.

Interrogatory 5th. Answer. I know that she claimed the ownership of a fine carriage that was drawn in a lottery in the city of Charleston, S. C., upon a ticket presented to her by Mr. John Hudson, which she afterwards sold to Dr. Haywood Jones, of Limestone County, Alabama, for fifteen hundred dollars.

Interrogatory 7th. Answer. I know that she received a tract of land situated in Panola County, Mississippi, which was sold by her husband, John W. Scruggs, for about thirty-six hundred dollars. I know of no other money.

Interrogatory 8th. Answer. I know that she relinquished her dower in a valuable plantation, situated in the State of Arkansas, containing about 1,500 acres, which was worth previous to the late war about $75 per acre. She also relinquished her dower in certain other lands, situate in said State, which originally cost thirty-five thousand dollars.
203 She also relinquished her dower in what is known as the Brown

property, situated within the corporation of the city of Huntsville, valued at thirty thousand dollars. Also one other tract of land, situated in Jackson County, Alabama, the value of nine thousand dollars. And I would say that, at a reasonable estimate, *that* her dower-interest in the above lands would be worth from twenty-five to thirty thousand dollars.

In answer to cross-interrogatory he says:

I know nothing more than what has been stated in my answers to the direct interrogatories.

JAS. H. SCRUGGS.

Witness SAMUEL OTIS, being next examined, says:

In answer to interrogatories Nos. 1, 2, 3, 4, 5, 6, & 7, I know nothing.

Interrogatory 8th. Answer. I know that John W. Scruggs was the owner of a valuable plantation, situated in the State of Arkansas, containing about 1,500 acres, and the proposal of Geo. Anderson, of Greensboro', Indiana, to me I consider equivalent to an offer of $50.00 per acre. The same land could not have been sold for anything like its value, without the relinquishment of dower. I know nothing further.

SAML. A. OTIS.

204 STATE OF ALABAMA,
County of Madison:

The foregoing depositions of James J. Donegan, Martha Ann Spotswood, Fred Tate, James H. Scruggs, & Samuel Otis, witnesses for complainant in the foregoing-stated case, were taken by and before me, in the city of Huntsville, Ala., on the 30th November & 2 & 3rd December, 1867, and I hereby certify that I am not related in any way, nor of counsel, to either party, nor interested in the event of the suit. That the depositions of James J. Donegan, Martha Ann Spotswood, & Fred Tate were written down by me in the presence of said witnesses, & by them signed. That the depositions of James H. Scruggs & Samuel Otis were written by said witnesses, & sworn to by them after the' had signed the same. That none of said depositions have been in any wise altered or changed, nor out of my possession, since they were taken.

Given under my hand and seal this 3rd day of December, 1867.

R. H. WILSON, [SEAL.]
Commissioner.

The State of Alabama to Edmund J. Taylor & Andrew J. Roach, of the county of Shelby, in the State of Tennessee:

Know you that we, in confidence of your prudence and fidelity,
205 do hereby commission, authorize, and require you to call and cause to come before you, or either of you, at such time and place as you may appoint, F. A. Sanders, a witness on the part of complainant, in a cause pending in our court of chancery for the 29th chancery district of the State of Alabama, wherein Narcissa Scruggs, by next friend, is complainant, and John W. Scruggs is defendant, and him, after being duly qualified, diligently examine on the interrogatories of the complainant and the cross-interrogatories of the defendant, hereto annexed, and his deposition so taken, from under your hands and seals, or the hand & seal of either of you, send certified to our said chancery court, at the term thereof to be held at the court-house in Huntsville on the first Monday after the fourth Monday in November instant, to be read in evidence on the trial of said cause.

Witness Isaiah Dill, register of said chancery district, at office in Huntsville, this 19th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of American Independence the 92nd year.

ISAIAH DILL, *Register.*

In the 29th chancery district of Alabama.

NARCISSA SCRUGGS, BY HER NEXT FRIEND, L. H. Scruggs,
vs.
JOHN W. SCRUGGS.

206 Interrogatories to be propounded to F. A. Sanders, of Memphis, Tennessee, a witness, whose answers, when taken according to law, will be read in evidence on the trial of *of* the above case for the complainant.

1. State whether or not you are acquainted with the parties to the above suit, and how long you have known them.
2. Did you know William Weakley, of Florence, Alabama? State whether he is living or dead. If you say he is dead, please state when he died; and where was he residing when he departed this life?
3. State whether or not Narcissa Scruggs, the complainant in this case, was an heir at law of the said William Weakley.
4. State what amount she received as a distributee of said estate, and when the same was paid, and by whom. State fully.
5. Please state what you know concerning the sale of a fine carriage to Dr. Haywood Jones by complainant. If you know anything of it, state whose property it was. If you say it was the property of complainant, please state how she derived a title to the same. State also the price paid by Dr. Jones for the same, if you know.
6. Please state whether you know anything about a certain sum having been presented to complainant by George Cox. If so, state
207 when, the amount, and the consideration for the same.
7. If you know of any other sums of money or property which defendant obtained of the estate of complainant, or in her right, or by reason of his intermarriage with her, state fully what the sum of money was, or what property it consisted of. Do you know anything of any lands in Mississippi obtained by defendant by reason of his intermarriage with complainant? If so, state how much, and the disposition made of the same.

LEWIS & SNODGRASS,
Sols. for Complt.

Cross-interrogatory to F. A. Saunders, filed by defendant November 14th, 1867:

1. If, in answer to interrogatory 5, propounded by plaintiff, you say you know anything of the sale of a carriage to Dr. Haywood Jones, please state how you learned anything in reference to the same; and state, if you can, how the complainant, Narcissa Scruggs, became the owner of said carriage.

FRED TATE,
For Deft.

In chancery, 29th district.

NARCISSA SCRUGGS, BY NEXT FRIEND, L. H. Scruggs,
vs.
JOHN W. SCRUGGS.

208 F. A. SANDERS, witness in the above cause, after being duly sworn according to law, deposeth & saith, in answer to interrogatories:

Interrogatory 1. He saith, I am acquainted with the parties to the above suit. Have known each of them for thirty years.

Interrogatory 2nd. I was acquainted with William Weakley. He is dead. He died, I think, either in the year 1854 or 1855. Was, I think, living in Florence, Ala, at the time of his death.

3. He saith, she was.

4. He saith, My impression now is that she received somewhere between three and four thousand dollars from his estate, and it was paid to her, I think, by Mr. James J. Donegan.

5. He saith, Complainant drew a fine carriage in a lottery at Charleston, South Carolina, the ticket being presented to her by a friend, Mr. John Hudson, I believe. Have been informed that said carriage was sold to Haywood Jones. Don't know for how much.

6. He saith, I know nothing about the matter.

7. He saith, I know nothing of any other sums of money or lands, but know she inherited some valuable slaves from her mother's estate.

F. A. SANDERS.

Examination of Frank A. Saunders, witness on part of complainant in the above-stated cause, who is personally known to me, was,
209 between the hours eleven o'clock a. m. and twelve m., on the 22' day of November, 1867, at Memphis, in the county of Shelby, and State of Tennessee, called before the undersigned commissioner, and after being sworn to speak the truth, did depose and testify as above shewn and stated, which was taken down, reduced to writing, and signed by said witness in my presence, all which we certify under our hands this 22nd day of November, 1867.

A. J. ROACH. [SEAL.]

And afterwards, to wit, on the seventh day of December, 1867, being a further day of the term of said court, begun and held as last aforesaid, a decree was rendered in the words and figures following, to wit:

29th district, northern chancery division, Ala., Decr. 1867.

NARCISSA SCRUGGS, BY HER NEXT FRIEND,
vs.
JOHN W. SCRUGGS. } 708.

This cause is submitted on the bill, answer, exhibits, and proof.

It is adjudged, ordered, and decreed that the contract set forth in the bill of complaints heretofore entered into between John W. Scruggs & Narcissa Scruggs his wife, bearing date the 14' day of May, 1866,
210 be, and the same is hereby, in all things ratified and confirmed & declared valid to all intents and purposes, in respect to all the property conveyed therein; and the said John W. Scruggs is hereby

declared, ordered, and decreed to hold all of the said property, both real and personal, specifically, and only as the trustee of the said Narcissa Scruggs his wife, as her sole & separate property, free from marital restrictions, limitations, & incumbrances; and that all title to the said property be, & the same is hereby, divested out of the said John W. Scruggs, as an individual, and that the same is hereby vested in him as the trustee of the said Narcissa Scruggs as aforesaid, and not otherwise.

It is further adjudged, ordered, and decreed that the costs of this cause, to be taxed by the register, shall be paid by the said John W. Scruggs, for which an execution shall issue, in case the same be not paid within thirty days from the adjournment of this court. And in case an execution against him is returned not satisfied, then the said Narcissa Scruggs shall pay the said costs, for which an execution shall then issue.

Dec. 7, 1867.

S. K. McSPADDEN,
Chancellor.

211 THE STATE OF ALABAMA,
Northern Chancery Division:

I, William B. Figures, register of the fifth (formerly the twenty-ninth) district of the northern chancery division of the State of Alabama, hereby certify that the foregoing pages, numbered from one to fifty-six, inclusive, contain a full, true, and complete transcript of the record and proceedings of a cause lately pending in the chancery court for said twenty-ninth chancery district, as the same remains among the records of my office.

Given under my hand and the seal of said court at office in Huntsville, the sixteenth day of November, A. D. eighteen hundred and seventy-one.

[SEAL.] W. B. FIGURES,
Register.

[Stamp.]

For this transcript & certificate, $30.50; State stamp, 1.00—$31.50.

Rec'd Nov. 18, 1871, from Mrs. Narcissa Scruggs, by L. P. Walker, thirty-one $\frac{50}{100}$ for *for* the foregoing transcript.

W. B. FIGURES, *Reg.*

212 To the honorable John Foster, chancellor of the northern division of the State of Alabama, sitting for the twenty-ninth district at the court-house of Madison County in said State.

Henry C. Jones, John Peters, and Richard B. Baugh, citizens of the State of Alabama, bring this their bill of complaint against Samuel S. Clark, a resident of the said chancery district, and John W. Scruggs, a resident of the same district, and thereupon they complain and say:

1. The said Henry C. Jones, on the 24th day of February, 1859, in the circuit court of the said county of Madison, which was then in session, recovered a judgment against the said Samuel S. Clark for the sum of one hundred and eight dollars and thirty cents. Upon this judgment an execution, commonly called a fieri facias, issued, and on the same day was placed in the hands of the sheriff of the said county of Madison, who, on the 26th day of August, 1859, the regular return-day of said execution, returned the same, endorsed "No property found."

2. The said John Peters, on the 6th day of April, 1859, in the circuit court of the county of Lauderdale, which was then in session, re-
213 covered a judgment against the said Samuel S. Clark for the sum of four hundred & seventy-four dollars and eighteen cents debt, and eighty-five dollars and thirty-four cents damages, besides the costs, which were taxed to the sum of ten dollars. This judgment was rendered jointly against the said Samuel S. Clark and one Henry W. Sample. Upon this judgment an execution, commonly called a fieri facias, issued on the 4th day of May, 1859, and was on the same day placed in the hands of the sheriff of Lauderdale County, Alabama, and was by him levied on certain property as the property of the said Sample, which sold for the sum of one hundred and sixty-five dollars on the first Monday in October, 1859. Seven & $\frac{60}{100}$ dollars of the sum were applied to the sheriff's commissions, eight & $\frac{35}{100}$ dollars to the court-costs, fifty cents for a bond, leaving the sum of one hundred and forty-eight & $\frac{55}{100}$ dollars as a credit, Oct. 3rd, 1859, on said judgment. The said execution was returned October 3rd, 1859, by the said sheriff, "No other property found in my county."

3. Upon the last-named judgment an alias execution was issued
214 on the first day of November, 1859, and placed in the hands of the sheriff of said county of Lauderdale, and was by him on the 14th day of said month of November, 1859, returned, endorsed "No property found in my county."

4. The said Richard B. Baugh, on the 6th day of April, 1859, in the circuit court of the said county of Lauderdale, which was then in session, recoverd a judgment against the said Samuel S. Clark for the sum of two hundred and fifty dollars debt, and sixty-five dollars & sixty-nine cents damages by way of interest, besides the costs, which were taxed to the sum of ten & $\frac{20}{100}$ dollars. This judgment was rendered jointly against the said Samuel S. Clark and Henry W. Sample. Upon this judgment an execution, commonly called a fieri facias, issued on the 12th day of April, 1859, and on the 15th day of the same month was placed in the hands of the sheriff of the said county of Lauderdale, and was by him, on the 6th day of October, 1859, returned endorsed "No property found."

5. Upon this last-named judgment an alias execution was issued on the first day of November, 1859, and was placed in the hands of
215 the sheriff of the county of Lauderdale, and was by him, on the 14th day of the said last-named month, returned indorsed "No property found in my county."

6. The complainants are advised, believe, and charge that the said Samuel S. Clark and the said Henry W. Sample have no property, nor has either of them any property, either in the said county of Madison or the county of Lauderdale, or in any other county of the said State, subject to execution at law, or out of which said execution can be satisfied.

7. The said Samuel S. Clark some two or three years ago purchased from the defendant, John W. Scruggs, a vacant lot lying on the west side of the Pulaski road, in the said county of Madison, near the railroad and near the line of the corporation of the town of Huntsville, the dimensions of which and its precise boundaries are unknown to the complainants. Upon this lot the said Clark has erected valuable buildings, enclosed, and other improvements, and is now occupying the same as a residence.

8. The complainants do not know how much the said Clark
216 contracted to pay the said Scruggs for the said lot, nor how much has been paid upon it, but they charge that he has done much

work for said Scruggs, and has paid him some money, and that very little remains due on said purchase.

9. The legal title to said lot remains in the said John W. Scruggs.

To the end, therefore, that the said defendants may show why your orator should not have the relief hereby prayed, and may, upon their respective oaths, and according to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the statements, or the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are required to answer, that is to say:

1. Did not the said Scruggs sell a lot of ground to the said Clark?
2. What quantity of land is in said lot, and what are its precise boundaries?
3. What amount has the said Clark paid said Scruggs on said lot?

217 4. State when and how the payment or payments were made?

5. What was said Clark to give, and when? Disclose the contract fully.
6. Did not the said Clark do work for the said Scruggs?
7. If so, state what it came to, and when payable?
8. If there be any balance due, state how much.
9. Is not that balance to go as a credit on said lot?

They pray that said Samuel S. Clark and John W. Scruggs be made defendants to this bill, and summonses issued accordingly.

The complainants pray that an account may be taken ascertaining the balance due them respectively on their said judgments.

They further pray that an account may be taken ascertaining the amount due from the said Clark to the said Scruggs on said lot, if any, and that in taking said account any balance due from said Scruggs to said Clark for work, or otherwise, shall be applied on said lot.

They further pray that said lot and improvements may be sold, and the proceeds first applied to the payment of the balance due the

218 said Scruggs, if any, and the remainder be applied pro rata to the extinguishment or payment and satisfaction of said judgments.

And if the complainants have not asked the appropriate relief on the facts of their case, then they pray for such other and for further relief as may equitable adjust.

ROBINSON & JONES,
Sols. for Compl.

NOTE.—Let each defendant answer each section of the bill, and each interrogatory.

ROBINSON & JONES,
Sols. for Complt.

219 In the chancery court of Madison County, Alabama.

HENRY C. JONES ET AL.
vs.
SAMUEL S. CLARKE, JOHN W. SCRUGGS.

The defendant John W. Scruggs, saving and reserving, &c., answering complainant's bill, or so much thereof as he is advised is material, answering saith:

That he has no personal knowledge of the facts charged in paragraphs 1, 2, 3, 4, 5, & 6, of complainants' bill, and prays that as to those charges complainants may be held to strict proof.

In answer to the first interrogatory propounded, he says that he did sell unto the said Samuel S. Clarke a lot of land situated as described in complainants' bill.

To the 2d inty. he says: There are about two and one-half acres in said lot; the boundaries have never been laid off, but the lot has merely been enclosed by a fence.

To the 3rd inty. he says: The said Clark has never paid anything in money.

220 To the 4th inty. Unless the transactions hereinafter related shall be construed into a payment, the said Clark has never at any time paid anything on said lot.

To the 5th inty. & 6th inty., 7th, 8th, & 9th: The contract between Clark and this defendant was as follows: The defendant, John W. Scruggs, had erected a dwelling-house, and the defendant Clark, who is a plasterer by trade, was desirous of obtaining the contract to do the plastering about said dwelling-house, and agreed, if the said contract was allowed him, he would purchase a lot from defendant Scruggs, and erect*ed* valuable improvements upon it. The contract for the plastering was allowed him, which amounted to one thousand six hundred and twenty-four $\frac{50}{100}$ dollars, and the lot was sold to him at the price of one thousand two hundred and fifty dollars. It was agreed at the same time that defendant Scruggs should advance to the said Clark, from time to time, sufficient money to keep *as* his business and support his family; that the said Scruggs should retain the legal title to the lot sold as a security to him for the purchase-money and for any amount of money over the value of the work done in plastering which he

221 might advance to the said Clark, and that the lot & improvements should be bound for any balance due upon the adjustment of accounts. It was agreed, further, that in order to make the security good, the said Clark should move the old house hereinafter spoken of to the lot, and repair the same lot.

The work done in plastering was not agreed to be in payment of the lot, but the sale of the lot, the work in plastering, the advances, &c., were dependent covenants, as before stated.

It was further agreed that the said Clark should take at valuation an old dwelling-house which was on the lot of Scruggs, which old house is supposed to be worth six hundred dollars.

In pursuance of the said contract, the said Clark did the work in plastering, which, as before stated, amounted to one thousand six hundred and twenty-four dollars and eighty cents, and was put in possession of the lot of two and half acres, valued at twelve hundred and fifty dollars, upon which he had erected the improvements, or a part of them, as he was bound to do.

222 Defendant has from time to time, under said contract, holding the legal title as an equitable mor'gage to secure himself, advanced to the said Clark, in cash, the sum of nineteen hundred & twenty-four dollars and sixty-eight cents, which, with the price of the lot, makes the sum of three thousand one hundred and seventy-four dollars & sixty-eight cents, besides interest due to said Scruggs, and for which the said lot and improvements are bound to him by said contract; which sum is liable to be reduced by the sum of sixteen hundred & twenty-four dollars and fifty cents—Clark's bill for plastering—which would still leave the sum of one thousand five hundred and fifty dollars, besides interest, due said Scruggs, and for which amount he prays that said lot and improvements may be held liable to him, if the same be subjected under the prayer of complainant's bill. The old dwelling-house is still on the lot of Scruggs.

In addition to the foregoing answer, defendant pleads, in short, the statute of frauds, and having fully answered, he prays that he
223 may be dismissed hence with his reasonable costs, &c.

HUMPHREY & TRACY,
Sols. for Defdt.

STATE OF ALABAMA,
Madison County:

Personally appeared John W. Scruggs, who, being sworn, says that the statements of the foregoing answer are true as the same stand stated.

JOHN W. SCRUGGS.

Sworn to & subscribed this 28th day of November, 1860.

JAMES H. SCRUGGS.

224 HENRY C. JONES ET AL. *vs.* SAMUEL S. CLARK, JOHN W. SCRUGGS. } Bill, &c., in the chancery court of Madison County.

The defendant Samuel S. Clark, saving and reserving, &c., answering complainant's bill, or so much thereof as he is advised is material, saith:

The debts and judgments, as set forth in complainant's bill, are believed to be correct.

In answer to the other matters enquired of, he saith that he has read the answer of his co-defendant, John W. Scruggs; that the same is true and correct, and he adopts it as his answer. The whole contract between Scruggs & defendant was and is in parol.

In addition, defendant pleads, in short, the statute of frauds.

And, having fully answered, he prays that he may be dismissed hence with his reasonable costs.

HUMPHREY & TRACY,
Solicitors for Defdts.

STATE OF ALABAMA,
Madison County:

Before me, Robert D. Wilson, a justice of the peace in and for
225 said county, personally appeared Samuel S. Clark, who, being sworn according to law, on his oath states that the matters and things set forth in the foregoing answer made by him are true, as he verily believes, and so swears.

SAMUEL S. CLARK.

Sworn to & subscribed before me this 29 Nov., 1860.

R. D. WILSON, *J. P.*

226 The State of Alabama to any sheriff of the State of Alabama, greeting:

You are hereby commanded to summon Samuel S. Clark, if to be found in your county, that he, laying aside all excuse, appear personally at the office of the register of the twenty-ninth chancery district of the State of Alabama, in the town of Huntsville, in said district, on the rule-day to be held on the third Monday in April next, to answer the original bill of complaint exhibited in said chancery district by Henry C. Jones, John Peters & Rechard B. Baugh, complainants, against him

& John W. Scruggs, defendants. Herein fail not, and have you then & there this precept, with your return thereon endorsed.

Witness Isaiah Dill, register of said chancery district, at office in Huntsville, this 17th day of March, in the year of our Lord one thousand & sixty, and of American Independence the 84th year.

Attest:

ISAIAH DILL,
Register Ch. Ct.

Issued the 17th day of March, 1860.

MEM.—The defendant is to enter his appearance and to file his answer or demurrer to said bill in the register office on or before the day on which this writ is returnable; otherwise a decree pro confesso may be entered.

The sheriff is required to execute this writ thirty days before the return-day thereof.

Attest:

ISAIAH DILL, *Register.*

227 The State of Alabama to any sheriff of the State of Alabama' greeting:

You are hereby commanded to summon John W. Scruggs, if to be found in your county, that he, laying aside all excuse, appear personally at the office of the register of the twenty-ninth chancery district of the State of Alabama, in the town of Huntsville, in said district, on the rule-day to be held on the third Monday in April next, to answer the original bill of complaint exhibited in said chancery district by Henry C. Jones, John Peters & Richard B. Baugh, complainants, against him & Samuel S. Clark, defendant. Herein fail not, and have you then and there this precept, with your return therein endorsed. Witness Isaiah Dill, register of said chancery district, at office, in Huntsville, the 17th day of March, in the year of our Lord one thousand eight hundred and sixty, and of American Independence the 84th year.

Attest:

ISAIAH DILL,
Register Ch. Ct.

Issued the 17th day of March, 1860.

MEM.—The defendant is to enter his appearance and to file his answer or demurrer to said bill in the register's office, on or before the day on which this writ is returnable, or otherwise a decree pro confesso may be entered.

The sheriff is required to execute this writ thirty days before the return-day thereof.

Attest:

ISAIAH DILL,
Register.

228 In chancery, December term, 1862.

HENRY C. JONES ET AL.
vs.
SAMUEL L. CLARK ET AL.

This cause is submitted for decree on the pleadings.

It is therefore ordered, adjudged, & decreed that the register of this

court, after giving the notice required by law for sheriff's sale of real estate, expose, at public vendu' at the court-house door, of Madison County, the lot and premises described in complainant's bill, to the highest bidder for cash, and out of the proceeds of the sale retain the costs of this suit, & bring the balance into court, the sale to be made subject to a lien of John W. Scruggs, one of the defdts., for the unpaid purchase-money due him from Samuel S. Clark.

It is further decreed that the register execute to the purchaser a conveyance vesting in him all the right, title & interest, legal and equitable, of the said Samuel S. Clark, in and to the premises sold, & report his action to next term of this court, & also ascertain what the amount due complts. for principal & interest.

Dec. 2.

JOHN FOSTER,
Chancellor.

229	Henry C. Jones	193 30 debt	
	C. C. Madison	5 15 dam.	
	Judgment, 24th Feb'y, '59	8 05 costs	
			$121 50

John Peters, C. C. Land; 6 Apl., 1859:
Debt 474. 18.
Dam. 85. 34.
Credited Oct. 3, '59, $148. 55.

	326 63	
	85 34	
		411 97

Rec'ved B. Peters, C. C. Land; 6 Apt., '59:
Debt $250. 00.
Dam. 65. 69.
Cost 10. 20.

	326 89
	800 36
68 80	
5	
550 40	
32 93	
583 32	
860 36	
1,443 69	

230 Know all men by these presents that we, Samuel S. Clark, John W. Scruggs, & Edward E. Douglass, are held and firmly bound unto Henry C. Jones, John Peters, and Richard Baugh, in the penal sum of fifteen hundred dollars, for the payment of which well and truly to be made we bind ourselves, our, and each of our, heirs, executors, & administrators, jointly and severally, firmly by these present', sealed with our seals and dated this sixth day of July, 1866.

Whereas, in a cause pending in the chancery court for the twenty-ninth chancery district of the State of Alabama, between Henry C. Jones, John Peters, & Richard Baugh, complainants, and Samuel S. Clark & John W. Scruggs, defendants, it was, at the December term,

1862, of said court, "ordered, adjudged, and decreed that the register of this court, after giving the notice required by law for sheriff's sale of real estate, expose at public vendue, at the court-house door of Madison County, the lot & premises described in complainant's bill to the highest bidder for cash, and, out of the proceeds of the sale, retain the costs of this suit, and bring the balance into court. The sale to be made subject to the lien of John W. Scruggs, one of the defendants, for the unpaid purchase-money due him from Samuel S. Clark," from which
231 said decree the said Samuel S. Clark & John W. Scruggs have prayed an appeal to the next term of the supreme court of the State of Alabama, to be held at the city of Montgomery on the first Monday in December next.

The condition of the above obligation is such, that if the said Samuel S. Clark and John W. Scruggs shall prosecute their appeal to effect and satisfy such judgment as the supreme court may render in the premises, then this obligation shall be void; otherwise to be and remain in full force and effect.

S. S. CLARK,
By J. W. SCRUGGS.
JOHN W. SCRUGGS.
E. E. DOUGLASS.

Approved July 6th, 1866.

ISAIAH DILL,
Register.

232 The State of Alabama to the register of the chancery court of Madison County, greeting:

Whereas the record and proceedings of said court in a certain cause between Henry C. Jones et al., complainants, and Samuel S. Clark et al., defendants, wherein by said court, at May term, 1866, it was decreed adversely to the defendants, as it is said, (for said decree see your records,) were brought before our supreme court by appeal taken pursuant to law on behalf of said defendants:

Now, it is hereby certified that it was thereupon considered by our supreme court, on the 19th day of July, 1867, that said judgment or decree of said chancery court be affirmed, and that said appellees recover of said appellants and of E. E. Douglass, surely, the costs of the appeal in this court and said chancery court.

Witness John D. Phelan, clerk of said supreme ch. court, the 20th day of July, 1867.

JNO. D. PHELAN.
Clerk.

233 In the district court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JNO. W. SCRUGGS, bankrupt,
vs.
JOHN W. SCRUGGS AND WIFE.
} In chancery.

On this 9th day of November, A. D. 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes NARCISSA SCRUGGS, one of the defendants in the above-entitled cause, and the said witness, being by me sworn, was examined by L. P. Walker,

esq., solicitor for the defendant, whereupon said witness deposes and says:

234 Int. 1. You are Narcissa Scruggs, the defendant in this cause, are you not; and the widow of the late Jno. W. Scruggs?

Ans. I am.

Int. 2. When were you married to Mr. Scruggs, & where?

Ans. In Huntsville, Alabama, in December, 1843.

Int. 3. And this has been his residence ever since, has it not?

Ans. It has.

Int. 4. How were you related to Wm. Weakley, deceased, late of Florence, Ala?

Ans. He was my mother's brother—my uncle.

Int. 5. Do you remember the year in which he died?

Ans. It was between 1851 & 1853; the precise date I do not remember.

235 Int. 6. Did he die unmarried and childless, & intestate?

Ans. He did.

Int. 7. Were you one of his heirs at law or one of the distributees of his estate?

Ans. I was.

Int. 8. What was the amount of your distributive interest in his estate, as you now remember it?

Ans. I think it was about thirty-one hundred dollars.

Int. 9. Did it come to you in money or property?

Ans. My husband received it in money.

Int. 10. Do you remember the year in which he received it?

Ans. I don't know that I could be positive, but it was, I think, between 1852 & 1855.

236 Int. 11. How was this money, so received by your husband, used?

Ans. It was used in payment for the race-track property, which is the residence of defendant, & is the property in controversy in this suit.

Int. 12. Do you remember the year in which this property was purchased by Mr. Scruggs?

Ans. I think it was in 1850.

Int. 13. Was it then paid for or purchased on a credit?

Ans. On a credit; he had no means.

Int. 14. After said property was paid for, did you or not entertain the opinion & belief that the deed for the same had been made to you?

Ans. I thought it was in my name.

Int. 15. If your husband, the said John W. Scruggs, ever re-

237 ceived any other money belonging to your separate estate, state from what source it was derived, its amount, &, as near as you can now recollect, the date thereof.

Ans. He did receive other money. My father had conveyed to me certain lands in Panola County, Miss., in consideration of his indebtedness to me, & somewhere between 1850 & 1853, the precise date not remembered, but certainly after the purchase of the race-track property, & whilst we were in possession of the same, these lands were sold by my husband for $2,300 or $2,400, I do not remember which, & the money was received and appropriated by him. After 1850, and I think in 1853, I was in Charleston, S. C., with my husband. When a fine carriage was raffled for on the fair-grounds, a Mr. Hudson, a friend of my husband, made me a present of a ticket in said raffle, which drew the carriage. This carriage was sent to Huntsville, where Mr. Scruggs sold it to

238 one Hayward Jones, now deceased, for $1,200 or $1,500, I do not re-

member which. This money my husband appropriated to his own uses. After 1855, but somewhere along that date, Mr. Geo. Cox, whose daughter had been living with us & going to school in Huntsville for some length of time, & for whose board we made no charge, made me a present of $400 or $500, which my husband received and appropriated. After the purchase of said race-track property my husband sold lots therefrom to James H. Scruggs, Joseph Martin, & Samuel S. Clark. I cannot, however, state the prices at which said lots were sold. Mr. Clark was a plasterer, & did much work on the house erected on said property & now the subject of this litigation, & his bill for said work was to be a payment pro tranto for the purchase of said lot. I do not, however, remember the amount of said bill, and Mr. Clark is dead.

239 Int. 16. Before the execution of the deed of conveyance of 14th May, 1866, by said John W. Scruggs to you, was there or not any agreement on his part that he would convey said property to you? If so, state substantially, as near as you can remember it, what was said by him in regard thereto.

Ans. Before the execution of said deed there were conversations between my said husband and myself with reference to the transaction enquired after. He always said that this property properly belonged to me, as it had been paid for with my money, and to secure me for the monies so received by him belonging to me, and in consideration that I would relinquish my dower-rights to certain real estate which is particularly described in said deed of 14' May, 1866, he agreed to execute said deed to me. The relinquishments of dower were executed by me, and this, as near as I remember, is substantially the understanding

240 between us which gave rise to the making of said deed.

Int. 17. When said deed was executed what was Mr. Scruggs' condition of health?

Ans. He was in feeble health, and visited Bailey's Springs for relief during the winter.

Int. 18. Was there or not on your part, in receiving said deed and accepting the property thereby conveyed, anp intent to hinder, defraud, or delay thereby any of the creditors of the said John W. Scruggs?

Ans. There was not.

Int. 19. Was there or not, so far as any such purpose or intent was communicated to or known by you, any purpose or intent on the part of the said John W. Scruggs to hinder, defraud, or delay his creditors?

Ans. There was not.

241 Int. 20. When said deed was executed did you or not know that the said John W. Scruggs was insolvent?

Ans. I did not know it.

Int. 21. Are or not the considerations recited in said deed the true considerations upon which it was executed?

Ans. Yes, sir; they are the true considerations.

(At this point the examination of this witness is concluded by the defendants, and the cross-examination of said witness is made by F. P. Ward, esq., solicitor for complainants.)

Int. 22. When did your mother die?

Ans. I don't remember the year. I was very young. I was about 5 years old.

Int. 23. About what year?

Ans. I think it was in 1829.

Int. 24. Who died first, your mother or your mother's father?

242 My mother died long before her father.

Int. 25. How do you know that the said race-track was not paid for when purchased?

Ans. Because my husband had no means. He went in business at Charleston, & left here with borrowed means to travel with.

Int. 26. When did he go in business at Charleston?

Ans. He went in the winter of 1850, I think.

Int. 27. What was the value of the furniture conveyed to you in said deed of date 14' of May, 1866?

Ans. It was small. It was indifferent furniture. I don't remember the value of it.

Int. 28. What part of the race-track property was sold by your husband to James H. Scruggs?

243 Ans. That portion which is now owned by Dr. Beasley.

Int. 29. What other property besides that conveyed to you by said deed of date 14' May, 1866, & the income & profits thereof, have you owned since that date?

Ans. The only property which I have acquired since the making of that deed is the reversionary interest in the Corinth Hotel mentioned in that deed.

Int. 30. What nett income have you derived from the property situated in Madison County & conveyed to you in said deed?

Ans. We have had no income. It has been an expense to us.

Int. 31. Look upon the paper now shown you, purporting to be a copy of your husband's deed to you of date May the 1st, 1867, conveying all his right, title, and interest in the said Corinth Hotel to you, &

244 state whether it is a true copy or not.

Ans. I think it is a copy of the deed, & make it a part of my deposition, & identify the same with my initials "N. S."

Int. 32. File with your deposition in this cause, as exhibits thereto, copies of the deed from Samuel Ragland to John W. Scruggs, conveying said race-track property, & said deed of Jno. W. Scruggs & yourself to Francis A. Sanders, of date May 14, 1866, or the originals of said deeds.

Ans. I herewith file what is required in the preceeding interrogatory, & mark them respectively "R" & "S."

(At this point the cross-examination of the witness is concluded, & the rebutting examination is made by L. P. Walker, esq., solicitor for defendant.)

N. SCRUGGS.

245 Transfer of lease by John W. Scruggs, of Huntsville, Ala., to Narcissa Scruggs, of Huntsville, Ala., May 1st, 1867.

JOHN W. SCRUGGS *to* NARCISSA SCRUGGS. } Deed.

This indenture, made the 1st day of May, A. D. 1867, between John W. Scruggs, of the first part, and Narcissa Scruggs, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of twenty-five thousand dollars to him in hand paid by the said party of the second part, the receipt whereof is acknowledged, has granted, bargained, sold, and conveyed, and by these present' does grant, bargain, sell, and convey, to party of the second part, her heirs and assigns, all his right, title, and interest in and to that certain tract

or parcel of land situated in the county of Tishomingo, and State of Mississippi, known and described as follows:

A certain lot of ground situated in the town of Corinth, in the aforesaid county and State, the same on which stood formerly the building known as the Tishomingo Hotel, and now occupied by the Railroad Hotel, known as the Scruggs House, together with appurtenances to said premises belonging, and all estate, title, and interest, both at law and in equity, of the party of the first in the same; to have and
246 to hold the said granted premises, with the appurtenances, unto the party of the second part, her heirs and assigns, forever. And the said party of the first part, for his heirs, executors, and administrators, does hereby covenant and agree with the said party of the second part, her heirs and assigns, that the said party of the first part shall forever warrent and defend the title to the said premises unto the party of the second part, her heirs and assigns, against the claim of all persons lawfully claiming the same, or any part thereof, except on account of taxes due from and after the first day of January, A. D. 1867.

In witness whereof the said part of the first part ha hereunto set hand and seal the day and year first above written.

JOHN W. SCRUGGS. [L. S.]
[L. S.]

THE STATE OF MISSISSIPPI,
County of Tishomingo:

Personally appearing before me, H. Mask, a justice of the peace for said county, the within-named John W. Scruggs, who acknowledged thet he signed, sealed, and delivered the foregoing deed on the day and year therein mentioned, as his act and deed.

Given under my hand and seal this sixteenth day of October, A. D. 1867.

H. MASK, [L. S.]
Mayor of Corinth, &c., &c.

247 THE STATE OF MISSISSIPPI,
County of Tishomingo:

Personally appeared before me, , of the said county, the within named , wife of the said , who, in a private examination, separate and apart from her husband, acknowledged that she signed, seal', and delivered the foregoing deed, on the day and year therein mentioned, as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

Given under my hand and seal this day of , A. D. 186 .
[L. S.]

THE STATE OF MISSISSIPPI,
County of Tishomingo:

I, W. Y. Baker, clerk of the probate court of the said county, certify that the foregoing deed was received here for record on the 4th day of January, A. D. 1868, and has been duly recorded by me in deed-book A A, page 139.

Given under my hand and official seal at office, Jacinto, Mississippi, this 6th day of January, A. D. 1868.

W. Y. BAKER,
Clerk.

STATE OF MISSISSIPPI,
Alcorn County:

I, Robt. J. Fleming, clerk of the chancery court of said county, and ex-officio custodian of the record-books, papers, &c., that belonged

248 to the probate court of Tishomingo County, State of Mississippi, and now belong to said chancery court, do hereby certify that the foregoing is a true copy of the deed from John W. Scruggs to Narcissa Scruggs, as the same appears of record in my office.

Witness my hand and seal of said court at office in Corinth, Mississippi, this 24th day of October, A. D. 1871.

[SEAL.] ROBT. J. FLEMING,
Clerk.

THE STATE OF MISSISSIPPI,
Alcorn County:

I, Arther E. Reynolds, chancellor, sole and presiding of the eighth (8th) chancery district, State of Mississippi, in which said county of Alcorn is included, (which by law is a court of record,) do hereby certify that Robt. J. Fleming, whose genuine signature appears to the foregoing certificate, is, and was at the date thereof, clerk of said court, duly appointed, qualified, and commissioned; that his certificate and attestation are in due form of law, and that all his acts in the premises are and ought to be entitled to full faith and credit in judicature and thereout.

Given under my hand and seal this 24th day of October, 1871.

ARTHUR E. REYNOLDS, [SEAL.]
Chancellor.

THE STATE OF MISSISSIPPI,
Alcorn County:

249 I, R. J. Fleming, clerk of the chancery court of said county, (which by law is a court of record,) do hereby certify that Arthur E. Reynolds, whose genuine signature appears to the foregoing certificate, is, and was at the date thereof, chancellor of said court, sole and presiding, duly qualified and commissioned, and that all his acts in the premises are and ought to be entitled to full faith and credit in judicature and thereout.

Given under my hand and the seal of said court at office, Corinth, Mississippi, the 24th day of October, 1871.

[SEAL.] ROBERT J. FLEMING,
Clerk.

N. S.

250 STATE OF ALABAMA,
Madison County:

SAMUEL J. RAGLAND, ADMR., *to* JOHN W. SCRUGGS. } Deed.

Whereas on the 22nd day of November, 1850, Samuel Ragland, now deceased, late of said county & State, by written agreement of that date sold to John W. Scruggs, for the sum of three thousand two hundred & fifty dollars, payable in one and two years from 1st Jan'ry, 1851, the tract of land adjoining the town of Huntsville, known as the Huntsville race-course, and more particularly designated as follows, viz:

And whereas the purchase-money has been paid to the undersigned, as the administrator of the said Samuel Ragland since his decease: Now, therefore, this indenture, entered into this the 13th day of October, 1855, by and between the undersigned, Samuel J. Ragland, administrator of Samuel Ragland, deceased, of the first part, and the said John W. Scruggs, of the second part, witnesseth that, in consideration of the

premises, the said party of the first part, as the administrator of the said Samuel Ragland, doth hereby give, grant, bargain, & sell, alien, enfeoff, and convey unto the said John W. Scruggs, his heirs, executors, & administrators, all the right, title, and estate which was in the said Samuel Ragland, at the time of his decease, in and to the fore-
251 going and above-described tract or parcel of land, with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand and seal this 13th day of October, 1855.

S. J. RAGLAND. [SEAL.]

STATE OF ALABAMA,
Madison County;

I, Smith Adams, justice of the peace in & for Madison County, hereby certify that S. J. Ragland, whose name is signed to the foregoing conveyance, & who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this 15th day of January, 1857.

SMITH ADAMS, *J. P.*

The foregoing conveyance was delivered into the office of the judge of probate of Madison County, in the State of Alabama, for registration, on the 15th day of January, 1857, and was duly registered on the 23rd day of February, 1857.

F. L. HAMMON,
Judge P. C.

THE STATE OF ALABAMA,
Madison County:

I, Lewis M. Douglass, judge of the court of probate, which is a court of record, do hereby certify that the following two pages contain a true & correct transcript from the records of this court.

Given under my hand, at office in the city of Huntsville, this 18th day of November, 1871.

LEWIS M. DOUGLASS,
Judge Probate Court.

252 THE STATE OF ALABAMA,
Madison County:

JOHN W. SCRUGGS *to* FRANCIS A. SANDERS. } Deed.

Whereas the undersigned, John W. Scruggs, of the county and State aforesaid, is largely indebted to different persons residing in different localities and States; and whereas this indebtedness is individual and partnership indebtedness, being the partnership indebtedness of the firm of Scruggs, Donegan & Co.; and whereas he is also largely involved as endorser for others, and likewise as security and as a member of the firm of Scruggs, Donegan & Co., as acceptors of bills of exchange; and whereas owing to the loss or displacement, resulting from the recent civil war, of explanatory memorandum schedules of it, is impossible for him at this time to state with accuracy the extent of his liabilities, or

their character, or to ascertain how much thereof has been remitted by the laches of creditors; and whereas he is anxious to adjust, settle, and discharge, to the extent of his ability, all just claims against him, but is unable at this time, for the reasons above stated, to nominate with accuracy his creditors:

Now, therefore, the premises considered, I, John W. Scruggs, of
253 the county of Madison and State aforesaid, do hereby grant, bargain, and sell, alien, enfeoff, and convey unto Francis A. Sanders, of the city of Memphis, in the State of Tennessee, my undivided one-third interest, the remaining two-thirds being owned by Laurence B. Sheffey and Joseph Martin as tenants in common with myself in the following tracts and parcels of land, situate in the Batesville land-district, in the State of Arkansas, viz: The southwest of section 17, (160 acres;) the north ½ of section 18, (318.15;) the north ½ of the S. E. ¼ of section 19, (80 acres;) the S. W. ¼ of section 18, (158.16 acres;) the north ½ of N. E. ¼ of section 19, (80 acres;) the N. W. ¼ of section 19, 156.89 acres; the west ½ of N. E. ¼ of section 30, (80 acres;) the N. W. ¼ of section 30, (158.36 acres;) the northwest ¼ of the S. E. ¼ of section 30, (40 acres;) all in township three of range two east of the fifth principal meridian, containing twelve hundred and thirty-one $\frac{96}{100}$ acres. Also the north ½ of section 5, and the north ½ of the south ½ of section 5, fractional section 6, and fractional section 7, same township and range, containing sixteen hundred and ninety-eight $\frac{95}{100}$ acres; also the west ½ of section 33, (320 acres;) the north ½ of the N. E. ¼ of section 36, (80 acres;)
254 the S. W. ¼ of N. E. ¼ of section 36, (40 acres;) the N. W. ¼ of section 36, (160 acres;) the S. E. ¼ of S. E. ¼ of section 36, (40 acres;) the west ½ of S. E. ¼ of section 36, (80 acres,) in township 4 north of the base-line, and range two east of the fifth principal meridian, containing seven hundred and twenty acres; also the south ½ of the S. E. ¼ of section 18; the south ½ of the northeast ¼ of section 19; the south ½ of section 19; the west ½ of section 20; the S. E. ¼ of section 20, in township 3 north of the base-line, in range 2 east of the fifth principal meridian, containing nine hundred and fifty-eight $\frac{28}{100}$ acres; and also the S. W. ¼ of section 28; the S. E. ¼ of N. E. ¼ section 36, and the N. E. ¼ of S. E. ¼ section 36, in township 4, range 2 east aforesaid. Also his undivided one-third interest in the following real estate, situate in the city of Huntsville, in the county of Madison, in the State of Alabama aforesaid, the remaining two-thirds being owned by the aforesaid Laurence B. Sheffey and Joseph Martin, as tenants in common with him: A tract of land adjoining the corporation of Huntsville, on the west side, bounded on the east by the lands of James G. Scott, and the lands of the estate of Thomas Leonard, deceased, and the lands of Margaret Moore; south by the lands of the estate of Adam Hall, deceased, and west by
255 the lands of J. J. Donegan, and the lands of the estate of Adam Hall, deceased, and north by the Athens road and the half-acre lot of Z. P. Davis, containing in all forty acres. Also the following-described real estate, owned by the said John W. Scruggs in his own right, and situate in the county of Crittenden, in the State of Arkansas, that is to say: The south ½ of the northwest fractional ¼ of fractional section 13; the north fractional ½ of section 24, in township 7 north of base-line, range 8 east; the southeast ¼ of section 13; the south ½ of northeast ¼ of section 13, in same township and range; the west ½ of section 18; the southwest ¼ of the N. E. ¼ and the west ½ of the southeast ¼, and the southeast ¼ of the southeast ¼ of section 18; the north ½ of section 19; the southeast ¼ of the northeast ¼ of the southeast ¼ of section 18, in the same township and range, and containing the plantation

known as the Island place, near Marion, in the county of Crittenden aforesaid, estimated to contain about fourteen hundred and fifty acres:

To have and to hold the same, and every part and parcel thereof,
256 with the hereditaments and appurtenances thereto, the said Francis A. Sanders; in trust, nevertheless, and only to and for the uses, intents, and purposes following, that is to say: To convey the lands aforesaid in such manner, and at such time, and to such persons, being creditors of or purchasers from the said John W. Scruggs, as we, the said John W. Scruggs, shall, by instrument of writing, hereafter designate, nominate, and appoint; but if such designation, nomination, and appointment is not made by said John W. Scruggs within twelve months from the date thereof, the said twelve months being reserved for the purpose of ascertaining the extent of his liabilities, the said Sanders shall, with all convenient diligence, sell and dispose of the lands aforesaid, at public or private sale as he may deem most beneficial to the interest of the creditors of the said John W. Scruggs, and convert the same into money; and with and out of the proceeds of such sales the said Sanders shall first pay and disburse all the just and reasonable expenses, charges, and commissions attending the due execution of these presents, together with a reasonable and lawful
257 compensation for his own services, and with and out of the residue of such sales the said Sanders shall pay and discharge *para passu* such of the creditors of the said John W. Scruggs as shall have established by any satisfactory evidence legally subsisting debts, whether in judgment or otherwise, against him.

And for the better and more effectual execution of these presents, and of the trusts hereby created and reposed, the said John W. Scruggs doth hereby make, constitute, and appoint the said Francis A. Sanders his true and lawful attorney, irrevocable, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which may be necessary in the premises, and to the full execution of the said trust, and for the purposes of the said trust, to sue, prosecute, and defend, and implead for the lands aforesaid, hereby ratifinng and confirming whatever the said Francis A. Sanders shall lawfully do in the premis'. And now and in consideration and because of a deed this day executed by my husband, the aforesaid John W. Scruggs, contemporaneously
258 with this instrument, by which he conveys to me, to my sole and separate use and my sole and separate estate, certain property therein particularly set forth and described, and to which said deed reference is here made, as ascertaining the consideration upon which I became a party hereto, I, Narcissa Scruggs, wife of the said John W. Scruggs, do hereby join him in the execution of this deed of conveyance, and do hereby relinquish and acquit unto him, the said Francis A. Sanders, and to all persons who may claim under him by virtue of any of the stipulations hereof, all my dower-rights, interest, and estate in and to the lands hereinbefore set forth, and particularly designated and described.

In witness whereof the said John W. Scruggs and his wife, the said Narcissa Scruggs, have hereunto set their hands and affixed their seals, at Huntsville, Alabama, this the 14th of May, 1866.

JNO. W. SCRUGGS. [SEAL.]
NARCISSA SCRUGGS. [SEAL.]

THE STATE OF ALABAMA,
Madison County:

I, Robert D. Wilson, judge of the probate court of said county
259 & State, hereby certify that John W. Scruggs and his wife,

Narcissa Scruggs, whose names are signed to the foregoing conveyance, and who are known to me, acknowledge before me, on this day that, being informed of the contents of the conveyance, they execute the same voluntarily on the day the same bears date.

Given under my hand at Huntsville, Alabama, this 14th day of May, 1866.

R. D. WILSON,
Judge P. C.

STATE OF ALABAMA,
Madison County, City of Huntsville:

Be it remembered that on this 14th day of May, 1866, before me, Zebulon P. Davis, mayor of the city of Huntsville aforesaid, duly appointed and qualified, personally came and appeared John W. Scruggs, grantor in the above deed, to me personally known, and acknowledged that he voluntarily executed and delivered the foregoing deed for the uses, purposes, and consideration therein expressed, and desired the same to be certified; and, on the same day and at the same place, also personally came before me Narcissa Scruggs, wife of the said John W. Scruggs, and of full age, and to me well known, who, being then
260 by me examined in the absence of her said husband, and the contents of the foregoing deed being by me fully explained to her, she declared that she have of her free will executed the same for the uses and purposes therein expressed, without compulsion or undue influence of her said husband, and desires the same to be certified.

In witness whereof I have hereunto set my hand and affixed the seal of office, at Huntsville, Alabama, the day and date above.

[SEAL.] Z. P. DAVIS,
Mayor of Huntsville, Ala.

[Stamped according to law.]

The foregoing deed was delivered into the office of the judge of probate of Madison County, Alabama, for registration on the 15th day of April, A. D. 1866, and was duly registered on the 16th day of May, 1866.

R. D. WILSON,
Judge P. C.

261 THE STATE OF ALABAMA,
Madison County:

I, Lewis M. Douglass, judge of the court of probate, which is a court of record, do hereby certify that the foregoing eight pages contain a true & correct transcript from the records of this court.

Given under my hand, at office in the city of Huntsville, this 18th day of November, 1871.

LEWIS M. DOUGLASS,
Judge Probate Court.

262 In the district court of the United States, northern district of Alabama.

MILTON HUMES, AS ASSIGNEE OF JNO. W. Scruggs, bankrupt,
vs.
JOHN W. SCRUGGS & WIFE.
} In chancery.

On this 8th day of November, A. D. 1871, at Huntsville, Alabama, in said district, before me, Lionel W. Day, examiner for said court, comes MARTHA ANN SPOTSWOOD, a witness for defendants in the

above-entitled cause; and said witness, being first duly sworn, was examined by Leroy P. Walker, esq., solicitor for the defendants, in the presence of Francis P. Ward, esq., solicitor for complainants; whereupon the said witness deposes and says :

263 Int. 1. Are you acquainted with the parties to this suit?

Ans. I have known them all my life.

Int. 2. How are you related to the defendant, Narcissa Scruggs?

Ans. She is my uncle's wife.

Int. 3. Did you ever live in the family of the said Narcissa Scruggs after her marriage with the said Jno. W. Scruggs?

Ans. I did.

Int. 4. How long did you do so?

Ans. More than 12 months.

Int. 5. When was this?

Ans. It was about 1851 or 1852.

Int. 6. Do you know of any money being received by Jno. W. Scruggs after 1850, belonging to his wife's separate estate?

Ans. I do.

264 Int. 7. How much did he so receive, if you remember?

Ans. Three thousand or thirty-one hundred dollars. I am not certain which, but I know it was as much as $3,000?

Int. 8. From what source did he receive it?

Ans. From the estate of Wm. Weakley, who was an uncle of Mrs. Scruggs.

Int. 9. In what year was this, if you remember?

Ans. It was when I was there, in 1851 or 1852.

Int. 10. How did you derive your knowledge of the facts about which you have testified in your answers to ints. 6, 7, 8, & 9?

Ans. By being with Mr. & Mrs. Scruggs, & hearing them speak of it themselves.

Int. 11. Were these admissions of the said Jno. W. Scruggs made while he was in the possession of the property now in controversy in this suit?

265 Ans. I' was spoken of both before & after he was in possession.

Int. 12. Were these conversations prior to 1860?

Ans. They were.

Int. 13. Do you know what disposition the said Jno. W. Scruggs made of the money so received from the estate of Wm. Weakley?

Ans. He paid it for the lands which were then called the race-track, which are the lands in controversy now.

Int. 14. How do you know he so paid it?

Ans. Because I heard him say many times that he had so paid it.

Int. 15. Were these statements of the said Scruggs made prior to 1860, & whilst he was in possession of said property?

Ans. They were.

Int. 16. Do you know of any other money received by the said Jno. W. Scruggs, after 1850, belonging to his wife's separate estate?

266 Ans. I do.

Int. 17. From what source did he recover it, & how much was it, & about what time, if you remember?

Ans. I remember after Mr. Scruggs established a commission-house in Charleston, & between 1851 and 1855—I cannot be more exact in the date—Mrs. Scruggs drew a carriage at Charleston in a raffle, a ticket in which had been her by a gentleman friend whose name I do not now remember. This carriage was brought to Huntsville & was sold by Mr. Scruggs to one Hayward Jones, of Limestone County, who is now dead—

the sum obtained for the same I do not now remember, but it was not less than one thousand dollars. Mr. Scruggs also sold lands in Panola County, Mississippi, which had been conveyed to his wife by her father, Gen. Patterson; the sum realized for these lands was somewhere in the neighborhood of $2,300.00. My knowledge of these transactions
267 was derived from the admissions of said Scruggs in conversations had in his family & in my presence. These conversations were while he was in possession of the property in litigation & prior to 1860

Int. 18. Prior to 1860, & whilst he was in possession of the property in controversy, did you ever hear the defendant, Narcissa Scruggs, say to the said Jno. W. Scruggs that he should have taken the title to the said property in her name?

Ans. I don't know that I ever did then, but after the close of the war, & when the solvency of the community generally was in question, & after the institution of some suits against Mr. Scruggs, but not this suit, I heard this question more than once put by Mrs. Scruggs to Mr. Scruggs, and his answer was, that so to have taken said deed would have injured his credit, and that he always thought he would be able to make ample provision for his family. My own belief, however, always was, from what I knew of the transactions, that the deed to said property had
268 been taken in the name of Mrs. Scruggs.

The witness states, by consent of both counsel, that it was after the purchase of the race-track property, & while they resided on it, that she resided with Mr. & Mrs. Scruggs, as stated.

(Complainants, by counsel, objects to the answers of the witness to ints. 6, 7, 8, 9, 13, and 17, because they are hearsay evidence, & moves the exclusion of the same, which is certified to the court for its decision.)

MARTHA A. SPOTSWOOD.

I certify that the above deposition was reduced by me to writing in the presence of said witness, & by me read over to the witness, and afterward by said witness subscribed and sworn to before me this 8 November, 1871.

Witness my hand & seal.

LIONEL W. DAY, [SEAL.]
Examiner.

269 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. SCRUGGS,
vs.
JOHN W. SCRUGGS & NARCISSA SCRUGGS.

On this 15th day of November, 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes Sidney S. Darwin, a witness for the defendant in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by L. P. Walker, esq., solicitor for the defendant, and in the presence of F. P. Ward, esq., solicitor for the compl'ts, whereupon said witness deposes and says:

Int. 1. How long have you resided in Madison County, Alabama?

Ans. Forty years.

Int. 2. What is your occupation, and how long have you been so engaged?

270 Ans. I am a merchant; have been selling good' on my own responsibility for 10 years.

Int. 3. Have you, or not, a general knowledge of the pecuniary condition of the country in 1866?

Ans. I hardly know how to ans. I suppose I had the same knowledge of any man of my ability. I was interested in it a good deal.

Int. 4. Did not your personal interest induce you to make special inquiry in that direction?

Ans. It did.

Int. 5. Was it or not possible at that time for any man to place a correct value upon his assetts or choses in action, or was the condition of the country in such transition as to render it impossible to ascertain the value of assetts, or the pecuniary status of debtors?

271 Ans. I don't think it was possible for any man to place a correct value upon his assetts. I could not upon mine. I want to explain here that there might be exceptions, but I mean to state the general rule. I judge from my own experience. I had a great deal out at that time, & I considered that what I got from it was so much found. You could not tell anything about the pecuniary status of debtors as a general thing, because people were shifting so much & turning their property so.

Int. 5. Do you know the property in controversy known as the Watty Scruggs property, & the family residence?

Ans. I never was in it. I know where it is & its general character.

Int. 6. What would this property, in your opinion, have sold for for cash in 1866?

Ans. I should say as my best judgment that ten or fifteen thousand dollars would have been the outside figure in cash for that prop-

272 erty at that time. I am satisfied it would not have sold for $15,000, as nobody had the money to buy it. It is doubtful if it would sell for that now.

(At this point the direct examination closes & witness is cross-examined by F. P. Ward, esq., for complainant.)

Int. 6. Is not said property, or the greater part thereof, within the corporate limits of the city of Huntsville?

Ans. I think it is.

Int. 7. Is it not susceptible of division into eligible building-lots?

Ans. I can't ans., as I was never on it. I don't know the plot of it; how it lies & what its position is.

Int. 8. Does it not front with two sides on the Athens pike & the Pulaski road?

Ans. It does, I think.

273 Int. 9. Is not all of it seen from these two roads susceptible of division into eligible building-lots?

Ans. I can't say. It may be, but I don't its position.

Int. 10. At what value would you have estimated the residence with 10 acres of the ground in May, 1866, if you had been appointed to appraise it as the property of an estate?

(To so much of said question as is in these words, "if you had been appointed to appraise it as the property of an estate," the defendant, by her counsel, objects for the reason that it is irrelevant and illegal, which is certified to the court, &c.)

Ans. If I had been appointed to appraise it as the property of an estate, of course I should have gone over it and looked at it, & based my judgment thereon, because my opinion, as I give it now, is from an out-

side pressure, as I would term it, Mr. Ward, of what property was
274 worth at that time. I could not appraise it as property of an estate. My judgment, if I had been putting it down to an estate, I would have put it down at ten thousand dollars.

Int. 11. Would landed property generally around Huntsville have sold for half its value, at an execution-sale, for cash, in 1866—in May, 1866?

(Defendant, by her counsel, objects to so much of said question as is in these words, "at an execution-sale for cash," because it is illegal & irrelevant, which is certified.)

Ans. I think that would be entirely owing to circumstances, the situation, and kind of property.

S. S. DARWIN.

I certify that on this 15 day of November, A. D. 1871, as written in the caption hereof, I was attended by said Sidney S. Darwin, a witness for ; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

275 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. SCRUGGS,
vs.
JOHN W. SCRUGGS & WIFE, NARCISSA SCRUGGS.

On this 16th day of November, 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes Mills Jenkins, a witness for the defendants in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by L. P. Walker, esq., solicitor for the defendants, and in the presence of F. P. Ward, esq., solicitor for the complainants, whereupon said witness deposes and says:

In answer to interrogatory 1st: Where do you resid' & how long have you so resided?

Ans. In Madison County, Alabama, about forty years.

Int. 2. What is your vocation in life?

Ans. Farming.

Int. 3. Are you not acquainted with the plantation in Crittenden County, Arkansas, once*d* owned by John W. Scruggs, & now the
276 property of James J. Donegan?

Ans. I am.

Int. 4. What character of land is said plantation, valuable or otherwise?

Ans. Valuable, sir. It was a No. 1 plantation.

Int. 5. In your judgment, what was said plantation worth per acre in 1866?

Ans. Forty (40) dollars per acre.

MILLS JENKINS.

277 I certify that, on this 16th day of November, A. D. 1871, as written in the caption hereof, I was attended by said Mills Jen-

kins, a witness for defendants; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

278 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE, &C., *vs.* JNO. W. SCRUGGS & WIFE. } In chancery.

On this 8th day of November, A. D. 1871, before me, Lionel W. Day, examiner, &c., at Huntsville, in said district, comes Zebulon P. Davis, a witness for defendants, & said witness, being sworn by me & examined by L. P. Walker, esq., solicitor for the defendant, deposes & says:

Int. Do you know the parties to this suit?

Ans. Yes, sir.

Int. 2. Where did you reside on the 14th day of May, 1866?

Ans. In Huntsville, Alabama.

Int. 3. What office did you then hold in said city of Huntsville?

Ans. I was mayor of the city.

Int. 4. As such mayor, did you on said 14 day of May, 1866,
279 take the acknowledgment of the defendant Narcissa Scruggs, to a certain relinquishment of dower-rights, made in writing, to Thomas M. Peters, bearing date the said 14 day of May, 1866, which said relinquishment is now exhibited and shown to you?

Ans. I did.

Int. 5. Did you, on said 14th day of May, 1866, certify in your official character as such mayor, made in writing on said relinquishment, the said acknowledgement of the said Narcissa Scruggs of the execution of the same?

Ans. I did.

Int. 6. Make said relinquishment a part of this your deposition, placing upon it some mark of identification, and state what that mark is.

Ans. I herewith make said relinquishment a part of my deposition, having endorsed thereon, as a mark of identification, my initials, Z. P. D., Nov. 8, 1871.

Int. 7. To whom did you deliver said relinquishment after your said certification of its acknowledgement.

280 My best recollection is that I delivered them to John W. Scruggs.

Z. P. DAVIS.

I certify that the above deposition was by me reduced to writing in the presence of the witness & L. P. Walker & F. P. Ward, solicitor for defts. & plaintiffs respectively, & and that said deposition was there by said witness signed in my presence.

Witness my hand & seal.

[SEAL.] LIONEL W. DAY,
Examiner.

side pressure, as I would term it, Mr. Ward, of what property was
274 worth at that time. I could not appraise it as property of an estate. My judgment, if I had been putting it down to an estate, I would have put it down at ten thousand dollars.

Int. 11. Would landed property generally around Huntsville have sold for half its value, at an execution-sale, for cash, in 1866—in May, 1866?

(Defendant, by her counsel, objects to so much of said question as is in these words, "at an execution-sale for cash," because it is illegal & irrelevant, which is certified.)

Ans. I think that would be entirely owing to circumstances, the situation, and kind of property.

S. S. DARWIN.

I certify that on this 15 day of November, A. D. 1871, as written in the caption hereof, I was attended by said Sidney S. Darwin, a witness for ; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

275 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. SCRUGGS,
vs.
JOHN W. SCRUGGS & WIFE, NARCISSA SCRUGGS.

On this 16th day of November, 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes Mills Jenkins, a witness for the defendants in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by L. P. Walker, esq., solicitor for the defendants, and in the presence of F. P. Ward, esq., solicitor for the complainants, whereupon said witness deposes and says:

In answer to interrogatory 1st: Where do you resid' & how long have you so resided?

Ans. In Madison County, Alabama, about forty years.

Int. 2. What is your vocation in life?

Ans. Farming.

Int. 3. Are you not acquainted with the plantation in Crittenden County, Arkansas, once*d* owned by John W. Scruggs, & now the
276 property of James J. Donegan?

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Ans. Valuable, sir. It was a No. 1 plantation.

Int. 5. In your judgment, what was said plantation worth per acre in 1866?

Ans. Forty (40) dollars per acre.

MILLS JENKINS.

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kins, a witness for defendants; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

278 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE, &C., *vs.* JNO. W. SCRUGGS & WIFE. } In chancery.

On this 8th day of November, A. D. 1871, before me, Lionel W. Day, examiner, &c., at Huntsville, in said district, comes Zebulon P. Davis, a witness for defendants, & said witness, being sworn by me & examined by L. P. Walker, esq., solicitor for the defendant, deposes & says:

Int. Do you know the parties to this suit?

Ans. Yes, sir.

Int. 2. Where did you reside on the 14th day of May, 1866?

Ans. In Huntsville, Alabama.

Int. 3. What office did you then hold in said city of Huntsville?

Ans. I was mayor of the city.

Int. 4. As such mayor, did you on said 14 day of May, 1866,
279 take the acknowledgment of the defendant Narcissa Scruggs, to a certain relinquishment of dower-rights, made in writing, to Thomas M. Peters, bearing date the said 14 day of May, 1866, which said relinquishment is now exhibited and shown to you?

Ans. I did.

Int. 5. Did you, on said 14th day of May, 1866, certify in your official character as such mayor, made in writing on said relinquishment, the said acknowledgement of the said Narcissa Scruggs of the execution of the same?

Ans. I did.

Int. 6. Make said relinquishment a part of this your deposition, placing upon it some mark of identification, and state what that mark is.

Ans. I herewith make said relinquishment a part of my deposition, having endorsed thereon, as a mark of identification, my initials, Z. P. D., Nov. 8, 1871.

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Z. P. DAVIS.

I certify that the above deposition was by me reduced to writing in the presence of the witness & L. P. Walker & F. P. Ward, solicitor for defts. & plaintiffs respectively, & and that said deposition was there by said witness signed in my presence.

Witness my hand & seal.

[SEAL.] LIONEL W. DAY,
Examiner.

281 THE STATE OF ALABAMA,
Madison County:

In consideration and because of a deed this day executed by my husband, John W. Scruggs, contemporaneously with this instrument, by which he conveys to me, to my sole and separate use, and as my sole and separate estate, certain property and interests therein particularly described and set forth, and to which said deed reference is here made as ascertaining the consideration upon which this relinquishment is based, I, Narcissa Scruggs, wife of the said John W. Scruggs, do hereby relinquish and acquit unto Thomas M. Peters, and to all persons who may claim under him, all my dower interest, rights, and estate in and to the N. W. ¼ of section 17, the S. W. ¼ of section 8, the S. W. ¼ of the S. E. ¼ of section 18, the S. E. ¼ of the S. E. ¼ section 18, the S. W. ¼ of the N. E ¼ of section 18, the north ½ of the west ½ of the N. E. ¼ of section 19, and the E. ½ of section 18; all in township , of range , in the county of Crittenden, in *in* the State of Arkansas, containing about eight hundred and forty acres, and sold by the said John W. Scruggs to the said Thomas M. Peters in the year 1860.

In witness whereof I have hereunto set my hand and affixed my seal this 14th day of May, 1866.

NARCISSA SCRUGGS. [SEAL.]

282 THE STATE OF ALABAMA,
County of Madison, City of Huntsville:

Be it remembered that on this 14th day of May, 1866, before me, Zebulon P. Davis, mayor of the city of Huntsville aforesaid, duly appointed and qualified, personally came and appeared Narcissa Scruggs, wife of John W. Scruggs, and of full age, and to me well known, who, being there by me examined, in the absence of her said husband, and the contents of the foregoing instrument being fully explained to her, she declared that she had, of her free will, executed the same for the uses and purposes therein expressed, without compulsion or undue influence of her said husband, and desired the same to be certified.

In witness whereof I have hereunto set my hand and affixed my seal of office, at Huntsville, Alabama, the day and date above.

Z. P. DAVIS,
Mayor of Huntsville, Ala.

Z. P. D., November 8th, 1871.

283 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. SCRUGGS,
vs.
JOHN W. SCRUGGS & WIFE. } In chancery.

On this 11th day of November, 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes Joseph Martin, a witness for the defendants in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by L. P. Walker, esq., solicitor for the defendant, and in the presence of F. P. Ward, esq., solicitor for the complainants; whereupon said witness deposes and says:

Int. 1. How long have you resided in Huntsville, Ala.?
Ans. About 18 years.
Int. 2. Are you acquainted with the property in litigation, known as

the race-track property, purchased by the late John W. Scruggs of Samuel Ragland?

284 Ans. I am acquainted with the property in litigation, known as the race-track property, and purchased by said Scruggs, but I do not know of whom he purchased it.

Int. 3. After his said purchase of said property, did you buy any portion thereof from the said Scruggs?

Ans. I did.

Int. 4. In what year did you make this purchase?

Ans. In 1856, or spring of 1857.

Int. 5. How much did you purchase?

Ans. About eleven (11) acres.

Int. 6. At what price?

Ans. Three hundred dollars per acre.

Int. 7. Did you pay the purchase-money to said Scruggs?

Ans. I did.

285 (At this point the direct examination of the witness is concluded, and the witness is cross-examined by T. P. Ward, esq., for complainants.)

Int. 8. Did you pay for the land you bought of Scruggs by money or by credit on his indebtedness to you?

Ans. In money.

Int. 9. Was the land you bought improved or unimproved?

Ans. It was unimproved.

Int. 10. Was the land you bought worth more or less per acre than the balance of the tract?

Ans. I should say all the land fronting on the turnpike & Pulaski road was worth as much as mine per acre. I mean the lots fronting on either road. I had the selection of my purchase, and took my lot on account of its view.

286 Int. 11. What was the entire tract in controversy worth per acre, exclusive of the improvements, in May, 1866?

Ans. I don't know.

Int. 12. What it worth, inclusive of improvements, in May, 1866?

Ans. I don't know.

Int. 13. Were you a member of the partnership-firm of Sheffey, Scruggs & Martin?

Ans. I was.

Int. 14. What amount of debts did it owe on 14 day of May, 1866?

(Defendant, by her counsel, objects to this question as irrelevant & illegal, which is certified to the court for its decision.)

Ans. I can't answer that question from memory.

Int. 15. Was the cash value of its property at that date more than sufficient to pay its debts?

(Defendant, by her counsel, objects to the question as irrelevant

287 and illegal, which is certified, &c.)

Ans. I have no means of ascertaining its cash value at that date.

Int. 16. Have you disposed of your partnership property? If yea, state to whom, and on what terms.

(Defendant, by her counsel, objects to this question as irrelevant and illegal, which is certified, &c.)

Ans. I made my interest over to Mrs. Sheffey, she undertaking to discharge the debts of the firm.

(Defendant, by her counsel, objects to this answer as irrelevant and illegal, which is certified, &c.)

Int. 17. Is the Mrs. Sheffey mentioned the widow and personal representative of the Sheffey mentioned as your partner?

(Defendant, by her counsel, objects to this int. as irrelevant & illegal, which is certified, &c.)

Ans. The same person.

(Defendant, by her counsel, objects to the answer as irrelevant & illegal, which is certified.)

288 Int. 18. How much of the lands owned by said partnership were improved or in cultivation, & how much wild or in wood?

(Defendant, by her counsel, objects to this question as being irrelevant & illegal, which is certified, &c.)

Ans. One lot of about ¾ of an acre was improved; the balance—I don't know how much was unimproved.

(Defendant, by her counsel, objects to this answer as irrelevant & illegal, which is certified.)

Int. 19. What was the improved lot worth?

(Deft., by her counsel, objects to this question as irrelevant and illegal, which is certified.)

Ans. There was no sale for property at that time, and I don't know what it was worth.

(Defts., by her counsel, object to this question as irrelevant & illegal, which is certified.)

289 Int. 20. Was it not sold under decree of the chancery court about that time?

(Deft., by her counsel, objects to this question as irrelevant & illegal, which is certified, &c.)

The party who purchased it had made no payment on it & we had to sell it to regain possession.

(Deft., by her counsel, objects to this question as irrelevant & illegal, which is certified.)

Int. 21. What did it bring at that sale?

(Deft., by her counsel, objects to this int. as irrelevant & illegal, which is certified, &c.)

Ans. I do not know.

Int. 22. Do you know whether it brought as much as $2,000 or not?

(Deft., by her counsel, objects to this int. as illegal & irrelevant, which is certified, &c.)

A. I do not know.

290 Int. 23. Do you know whether it brought as much as $3,000, or not?

(Defts. make same objection as above, which is certified.)

A. I don't know what it brought.

Int. 24. Do you know whether it brought as much as $5,000 or not?

(Deft., by her counsel, objects to this question as illegal & irrelevant, which is certified, &c.)

A. I think not.

(Defendant, by her counsel, objects to this int. as irrelevant and illegal, which is certified.)

JOSEPH MARTIN.

I certify that on this 11th day of November, A. D. 1871, as written in the caption hereof, I was attended by said Jos. Martin, a witness for defendants; that the deposition hereinbefore appearing was by me

reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

291 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE IN BANKRUPTCY, &c., *vs.* JOHN W. SCRUGGS & WIFE. } In chancery.

On this 8th day of November, A. D. 1871, at Huntsville, Alabama, in said district, before me, Lionel W. Day, examiner for said court, comes William Dickson, a witness for the defendants in the above-entitled cause, and said witness, being duly sworn, and examined by L. P. Walker, esq., solicitor for defendants, in the presence of Francis P. Ward, esq., solicitor for the complainants in said above-entitled cause, deposes and says:

Int. 1. Do you know the parties to this suit?

A. I knew Mr. & Mrs. Scruggs.

Int. 2. What is your vocation in life?

A. Planting.

Int. 3. Are you acquainted with the plantation in Crittenden County, Arkansas, once owned by Jno. W. Scruggs, & now the property of James I. Donegan?

A. I am.

Int. 4. What was the value of that plantation in 1866?

A. I was over the place in 1860 and have not been over it since. I know the estimate I then put on it. We talked about the value of his place & I told him what I thought it was worth. In 1860 I valued it at fifty dollars per acre. I suppose in 1866 it was worth as much as it was in 1860. It was a number 1 plantation. I was acquainted with the best plantations in Ark., & and I estimated it as high as any.

WM. DICKSON.

293 I certify that the above deposition was subscribed and sworn to before me this Nov. 8, 1871, in the presence of the counsel of the parties to the above cause.

Witness my hand & seal.

LIONEL W. DAY, [SEAL.]
Examiner.

294 In the district court of the United States for the northern district of Alabama.

IN RE MILTON HUMES, ASSIGNEE OF JOHN W. Scruggs, *vs.* JOHN W. SCRUGGS & HIS WIFE, NARCISSA Scruggs. } In chancery.

On this 10th day of November, 1871, before me, Lionel W. Day, examiner, personally appeared Joseph C. Bradley, a witness on the part

of the defendants in the above-entitled cause, and who, being by me first duly sworn on his , says, in answer to the interrogatories propounded:

Int. 1st. Where do you reside, and how long have you resided there?

Ans. In Huntsville, Alabama; and upwards of 45 years.

Int. 2. Did you know John W. Scruggs in his life-time; and, if so, how long have you known him?

Ans. I knew him upwards of forty years.

Int. 3. Were you or not on intimate terms with him, for how many years prior to his death?

Ans. I was always on friendly terms with him, and at times on intimate terms.

295 Int. 4. Do you know the property in controversy in this suit, and known as the race-track property, and purchased by the said John W. Scruggs & Samuel Ragland?

Ans. I do know the property.

Int. 5. For how many years have you known it?

Ans. I have known the place ever since I resided here.

Int. 6. Do you know whose money paid for said place?

Ans. I do not know it, except from what I heard the said Scruggs say.

Int. 7. If said Scruggs was in possession of said property when you heard him state how said place was paid for, and with whose money, state, as near as may be, what he said on that subject, & whether the statement was made to you more than once, and about the times, as near as you can recall them, if made before the institution of this suit.

(Complainant's counsel object to the above interrogatory No. 7 because it calls for hearsay evidence.)

296 Ans. He was in possession of the property when he told me that he paid for the property out of his wife's money. He told me he was going to pay for the property, or had done it, with his wife's money. He told me this more than once, and before the institution of this suit. It was before 1860 and after 1860, and before the institution of this suit that I had these conversations with him.

(Complainants, by counsel, object to the foregoing answer, on the ground that it is hearsay, which is certified to the court, &c.)

Int. 8. In the conversation so had by you with the said Scruggs, did he tell you the sources from which money had come to his wife?

Ans. Yes.

Int. 9. How did he say this money was derived?

(Complainants by counsel object to the foregoing int. No. 9 as calling for hearsay evidence, which is certified to the court.)

Ans. He received some money from William Weakley's estate, who was the uncle of Mrs. Scruggs. He told me repeatedly about getting moneys from his wife's grandmother's estate, Mrs. Weakley, and from Benjamin Patterson, the guardian of his wife; also her father.

297 (Complainants, by counsel, object to the foregoing answer on the ground that it is hearsay evidence, which is certified to the court, &c.)

Int. 10. In these converstions did he tell you how much money he so received from the estate of William Weakley?

Ans. Yes.

Int. 11. How much did he say he so received, if you remember?

(Objected to by complainant's counsel as calling for hearsay evidence, which is certified to the court, &c.)

Ans. To the best of my recollection he told me he received some four or five thousand dollars from William Weakley's estate.

(Objected to by complainant's counsel as being hearsay evidence, which objection is certified to the court, &c.)

Int. 12. How much did he tell you he received from other sources belonging to his wife, if you remember?

(Objected to by complainant's counsel as calling for hearsay evidence, which objection is certified to the court, &c.)

Ans. I don't remember.

298 Int. 13. Were you not familiar with the value of real estate in & around the city of Huntsville in the year 1866.

Ans. Yes; I was.

Int. 14. For what sum, in your judgment, would the property in controversy have sold in 1866?

Ans. I don't believe it would have exceeded ten thousand dollars, and don't believe it would have sold for that.

Cross-examination by defendants:

X Int. 1. If you had been the appraiser of it, as property of an estate, what would you have valued it at, on the 14th day of May, 1866?

Ans. I should not have valued it at exceeding ten thousand dollars.

X Int. 2. What is your estimate of the cost of improvements on it?

Ans. I suppose the cost of the improvements is ten thousand dollars or more.

X Int. 3. Were you examined as a witness in the case of Rob-
299 ert H. Wilson, assignee of Fleming Jordan against Fleming Jordan & wife, and F. B. Moore, pending in the district court of the United States for the northern district of Alabama.

(The defendant by her counsel objects to this question as irrelavent & illegal, which objection is certified to the court by the examiner.)

Ans. I was.

(The defendant, by her counsel, objects to the answer as irrelavent & illegal, which is certified to the court, &c.)

X Int. 4. In your deposition in that case, did you not estimate the fee-simple estate in a tract of land conveyed by Jordan to Moore, at seventy-five hundred dollars, and the contingent right of dower of said Jordan's wife, who was then over fifty-five years old, at three thousand dollars.

(The defendant, by her counsel, objects to this question as illegal and irrelavent, which is certified to the court, &c.)

Ans. I don't recollect the precise amount that I gave in my deposition in that case, but I think it was near that amount.

(The defendant, by her counsel objects to this answer as irrela-
300 vent and illegal, which is certified to the court.)

JOSEPH C. BRADLEY.

I certify that the above deposition was reduced to writing by Henry Barnard, esq., by consent of the parties, by their attorneys, & that the same was by said witness subscribed and sworn to before me this 10, November, 1871.

Witness my hand & seal.

LIONEL W. DAY, [SEAL.]
Examiner.

301 In the district court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. Scruggs,
vs.
JOHN W. SCRUGGS & HIS WIFE NARCISSA Scruggs.
} In chancery.

On this 10th day of November, 1871, before me, Lionel W. Day, examiner in chancery of said court, personally appeared Thos. S. McCalley, a witness for the defendant in the above-entitled cause, who, being by me first duly sworn, in answer to the interrogatories herein, says in anwer to—

Int. 1st. How long have you resided in Madison Co., Alabama?

Ans. Near thirty-nine years.

Int. 2. How long have you known the late John W. Scruggs?

Ans. All of that time.

302 Int. 3. Were you or not on terms of intimacy with him all of that time?

Ans. Quite so.

Int. 4. How long have you known the property known as the race-track property, and now in litigation in this suit?

A. All the time since I have been here.

Int. 5. Do you or not know the history of its purchase by the said John W. Scruggs?

Ans. I do.

Int. 6. State the circumstances under which he acquired it, and how he paid for it.

Ans. I bought it first and let him in as a partner. I bought the property, & Mr. Scruggs came to me and wanted to be a partner in the purchase. I consented that he should be, and he moved there with his family. (Afterwards he came to me and remarked that his wife wanted to make a home of it, and that she had four or five thousand dollars, or thereabouts, coming from Mr. William Weakley, who had just died in Flor-

303 ence, Alabama, who was her uncle. I consented that he might take the whole property, provided I got my pay from Mr. Ragland, from whom I bought the property in payment of a debt. Mr. Scruggs accordingly took the property, and I directed Mr. Ragland to make the deed directly to Mr. Scruggs. My debt was paid to me by Mr. Ragland. In these negociations Mr. Scruggs told me that his wife's money, received from Mr. Weakley's estate, was to pay for the property, and he has frequently told me since that it was paid for in that way.)

Int. 7. Were you familiar with the value of real estate in and around Huntsville in 1866.

Ans. I was.

Int. 8. How far did you then reside from the property in controversy?

A. About a mile or a mile and a quarter.

Int. 9. How long had you so resided?

Ans. Upwards of thirty years.

Int. 10. Were you or not well acquainted with said property?

A. I was.

305 Int. 11. What was said property worth in cash in 1866?

Ans. I should suppose eight or ten thousand dollars would have been a big price in cash.

(Complainant, by counsel, objects to so much of the answer to the

6th int'y as is included within red brackets, on the ground that it is hearsay and incompetent evidence, and moves for it' exclusion, which is certified to the court for its decision.

And the defendant, by her counsel, denies the right of the complainant now to make this objection, because the objection should have been made at the time that the answer was given, which is certified to the court for its decision.)

At this point the direct examination of the witness, which was by consent of parties adjourned on yesterday, the 10th day of Nov., 1871, to the present 11 November, is concluded, & the cross-examination of the witness by F. P. Ward, esq., sol'c'tr for complainant, is made.

Int. 12. Did you not apply for discharge under the bankrupt
306 act of 2' March, 1867?

(Defendant, by her counsel, objects to this int. as irrelevant & illegal, which is certified.)

Ans. I did.

(Deft., by her counsel, objects to this ans. as irrelevant & illegal, which is certified, &c.)

Int. 12. Before doing so, did you not convey your residence & lands to your wife's mother, and were not the same conveyed by her to your wife?

(Deft., by her counsel, objects to this int'y as irrelevant & illegal, which is certified, &c.)

Ans. I did.

(Deft., by her counsel, objects to this answer as irrelevant and illegal, which is certified, &c.)

Int. 13. Did not your said conveyance purport to be in satisfaction of your indebtedness due to her by stated accounts?

(Defendant, by her counsel, objects to this question as illegal and irrelevant, which is certified, &c.)

Ans. It was.

(Defendant, by her counsel, objects to this ans. as irrelevant and illegal, which is certified, &c.)

307 Int. 14. Were not three items of that account for her share of three crops of cotton raised by her and yourself jointly more than 20 years before.

(Deft., by her counsel, objects to this int'y as illegal and irrelevant, which is certified.)

Ans. I think it was.

(Defendant, by her counsel, objects to this question as irrelevant and illegal, which is certified.)

Int. 15. Were not each of said three items for exactly the same number of pounds of cotton, and at exactly the same price?

(Defendant, by her counsel, objects to this question as irrelevant and illegal, which is certified.)

Ans. I do not recollect now.

(Defendant, by her counsel, objects to this answer as being irrelevant and illegal, which is certified.)

Int. 16. Look at the stated account now shown you, and answer.

(Defendant, by her counsel, objects to this question as being irrelevant and illegal, which is certified for decision.)

Ans. It was.

308 (Defendant, by her counsel, objects to this answer as irrelevant and illegal, which is certified to the court for its decision.)

Int. 17. Did you not in your examination in bankruptcy before J. W.

Burke, register, state that you had no book or memoranda from which said stated accounts were made out?

(Defendant, by her counsel, objects to this question as irrelevant and illegal, which is certified.)

Ans. I don't recollect.

(Defendant, by her counsel, objects to this answer as irrelevant and illegal, which is certified.)

Int. 18. Did you not in your said examination in bankruptcy and in your deposition in the case of Clay, assignee, vs. Yourself & Wife & others, testify that said account was correct?

(Defendant, by her counsel, objects to this question as irrelevant & illegal, which is certified, &c.)

Ans. I think I did; it is on record; I don't know.

(Deft., *for* her counsel, objects to this question as irrelevant & illegal, which is certified, &c.)

THOS. S. McCALLEY.

I hereby certify that the above direct examination was by consent of parties reduced to writing by Henry Barnard, esq., and
309 that the remainder thereof was by me reduced to writing in presence of said ; that the same was duly sworn to by said witness; and, being read to said witness, was by him subscribed in my presence.

Witness my hand & seal.

Dated 11' Nov., 1871.

LIONEL W. DAY. [SEAL.]

310 In the district court of the United States, northern district of Alabama.

MILTON HUMES, ASSIGNEE, &C., }
vs.
JOHN W. SCRUGGS & WIFE. }

On this 15th day of November, 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes Robert W. Coltart, a witness for the defendant in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by , esq., solicitor for the , and in the presence of , solicitor for the , whereupon said witness deposes and says:

Int. 1. How long have you resided in Huntsville, Ala.?

Ans. I have been here all my life; forty-eight years.

Int. 2. Do you know the property in controversy in this suit, known as the Scruggs property, within & adjoining the city of Huntsville?

Ans. Yes; I believe I do.

311 Int. 3. What, in your opinion, would said property have sold for in cash in 1866?

Ans. In 1866, my recollection is that real estate in Huntsville was low, especially property of that character, and I reckon that property would have brought $15,000.00, though that would not have been its intrinsic value, nor anything like its cost.

(The direct examination of the witness is here closed, & the cross-examination is now made by F. P. Ward, esq., sol'c't'r for complainants.)

Int. 4. What would have been a fair value of that property at that date?

Ans. Judging from the demand of that class of property in the market, & estimating it according to the demand, I would say fifteen thousand dollars, but estimating it according to the improvements & the cost of such improvements, it would be worth twenty to twenty-five thousand dollars; that is to say, that the improvements & everything connected with it could not be put there for less than that amount.

312 I don't wish to say that it would bring that amount in the market.

Int. 5. Is not said property susceptible of subdivision into eligible building-lots.

Ans. It is.

Int. 6. Is it not mostly or entirely within the corporate limits of the city of Huntsville?

Ans. It is; but was not so at that time, in 1866.

Int. 7. What could have been realized from that property by subdividing & selling it in lots?

Ans. I suppose it would have brought a few thousand dollars more than if sold as a whole, but I can not give an accurate answer.

ROBERT W. COLTART.

I certify that on this 15 day of November, A. D. 1871, as written in the caption thereof, I was attended by said R. W. Coltart, a witness for defendant; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness & was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

313 In the district court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JNO. W. SCRUGGS, bankrupt, *vs.* JNO. W. SCRUGGS & WIFE. } In chancery.

On this 8 November, 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes Robert D. Wilson, a witness for the defendants, & said witness being duly sworn & examined by L. P. Walker, esq., solicitor for defendants, in the presence of Francis P. Ward, solicitor for complainants, deposes & says:

Int. 1. Do you know the parties to this suit?

Ans. I do.

Int. 2. Where did you reside on the 14th day of May, 1866?

Ans. In Huntsville, Alabama.

Int. 3. What office did you hold at that time in the city of Huntsville?

Ans. I was judge of the probate court for Madison County, Alabama.

314 Int. 4. As such judge of said probate court, did you on the 14th day of May, 1866, take an acknowledgment of the defendant Narcissa Scruggs, to a certain relinquishment of dower rights made in writing to Caswell B. Derrick, bearing date the said 14 day of May, 1866, which said relinquishment is now exhibited & shown you?

A. I did.

Int. 5. Did you on said 14th day of May, 1866, certify in your official

character as such judge of probate, made in writing on said relinquishment, the said acknowledgment of the said Narcissa Scruggs of the execution of the same?

Ans. I did.

Int. 6. Make said relinquishment a part of this your deposition, placing upon the same some mark of identification, & state what that mark is.

Ans. I hereby make said relinquishment a part of my deposition, having endorsed thereon as a mark of identification my initials "R. D. W., Nov. 9th, 1871."

Int. 7. To whom did you deliver said relinquishment after your said certification of its acknowledgment?

315 Ans. I don't remember whether it was to Mrs. Scruggs or to some one with her. I do not remember who was with her.

R. D. WILSON.

I certify that the above deposition was by me taken & reduced to writing in the presence of said witness, and was by said witness subscribed & sworn to in my presence 9th Nov., 1871.

Witness my hand & seal.

LIONEL W. DAY, [SEAL.]
Examiner.

316 THE STATE OF ALABAMA,
Madison County:

In consideration and because of a deed this day executed by my husband, John W. Scruggs, contemporaneously with this instrument, by which he conveys to me, to my sole and separate use, and as my sole and separate estate, certain property and interests therein particularly described and set forth, and to which said deed reference is here made as ascertaining the consideration upon which this relinquishment is based, I, Narcissa Scruggs, wife of the said John W. Scruggs, do hereby relinquish and acquit unto Caswell B. Derrick, and to all persons who may claim under him, all my dower-interest, rights, and estate in and to a certain tract of land situate in the county of Jackson, in said State, containing about eight hundred acres, and sold to him by the said John W. Scruggs, in the year 1858.

In witness whereof I have hereunto set my hand and affixed my seal this 14th day of May, 1866.

NARCISSA SCRUGGS. [SEAL.]

THE STATE OF ALABAMA,
Madison County:

I, Robert D. Wilson, judge of the probate court of said county & State, hereby certify that Narcissa Scruggs, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents thereof, she executed the same voluntarily on the day the same bears date.

Given under my hand this 14th day of May, 1866.

R. D. WILSON,
Judge P. C.

317 District court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE,
vs.
JOHN W. SCRUGGS AND NARCISSA SCRUGGS. } November term, 1871.

Come this cause for hearing on this 24th day of November, 1871, and

defendant, by counsel, suggests the death of defendant John W. Scruggs, and it is by the court decreed that the same be entered of record, and that the hearing of this cause proceed against defendant Narcissa Scruggs, which, by consent of defendants, is done.

And thereupon, upon hearing of said cause on the pleadings, it is by the court ordered, adjudged, and decreed that this complainant's bill be dismissed, and that complainant pay the costs herein expended.

318 In the district court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. Scruggs, bankrupt, complainant,
vs.
NARCISSA SCRUGGS AND JAMES ROBINSON, defendants.

Know all men by these presents, that we, Francis P. Ward and Algernon S. Fletcher, of the city of Huntsville, county of Madison and State of Alabama, are held and firmly bound unto Narcissa Scruggs and James Robinson, of said city, county, and State, in the sum of five hundred dollars, to be paid to the said Narcissa Scruggs and James Robinson, their executors or administrators; to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated October 29th, 1873.

Whereas the above-named Milton Humes, assignee of John W.
319 Scruggs, bankrupt, has taken an appeal to the Supreme Court of the United States to reverse a decree rendered in the above-entitled cause by the district court of the United States for the northern district of Alabama:

Now, therefore, the condition of this obligation is such that if the above-named Milton Humes, assignee of John W. Scruggs, bankrupt, shall prosecute his said appeal with effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

F. P. WARD. [SEAL.]
A. S. FLETCHER. [SEAL.]

W. W. GARTH,
E. C. BETTS,
Witnesses.

I, Lionel W. Day, clerk of the district court of the United States for the northern district of Alabama, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for the within-named amount.

[SEAL.] LIONEL W. DAY,
Clk. U. S. Dist. Court, Nor. Dist. of Alabama.

320 This bond approved Nov. 10, 1873.

[SEAL.] JOSEPH P. BRADLEY,
Associate Justice Sup. Ct. U. S.

Filed in my office this 13th day of Nov., 1873.

LIONEL W. DAY,
Clk. U. S. D. C.

320½ Supreme court of the United States, October term, 1874.

MILTON HUMES, ASSIGNEE OF JOHN W. SCRUGGS, bankrupt, appellant,
vs.
NARCISSA SCRUGGS AND JAMES ROBINSON, APPELLEES.

The clerk will enter my appearance as counsel for the appellant in this cause.

F. P. WARD.

In the district court of the United States for the northern district of Alabama.

MILTON HUMES, ASSIGNEE OF JOHN W. SCRUGGS, bankrupt, complainant,
vs.
NARCISSA SCRUGGS AND JAMES ROBINSON, DEFENDANTS.

To the honorable the Supreme Court of the United States:

The appeal of Milton Humes, assignee in bankruptcy of the estate of John W. Scruggs, bankrupt, the above-named complainant and appellant, respectfully shows:

That on August 11, 1870, he filed his bill in the district court of the United States for the northern district of Alabama against the above-named defendants and one John W. Scruggs, the husband of the defendant Narcissa Sc'uggs, alleging that said John W. Scruggs had been duly adjudged a bankrupt, and that complainant had been duly appointed assignee in bankruptcy of his estate, and that an assignment and conveyance thereof had been duly made to him under the bankrupt act of Congress of March 2, 1867; that on May 14, 1866, said John W.
322 Scruggs, being then insolvent, fraudulently conveyed certain real and personal property worth fifty thousand dollars to his wife, the defendant, Narcissa Scruggs, with the intent to hinder, delay, and defraud his creditors; that the debts proved against his estate in bankruptcy, and existing at the date of said conveyance, cannot be satisfied without subjecting said property to the payment thereof; and that on December 13, 1867, the defendant James Robinson filed a creditor's bill in the chancery court for the fifth district of the northern division of Alabama to subject said property to the payment of a debt due him from said John W. Scruggs, and praying that said conveyance might be set aside and declared null and void; that an account of what was due said Robinson on his said debt might be taken and a lien for the payment thereof established on said property, and that said property might be decreed to be assets of the estate of said bankrupt and surrendered to complainant's possession, to be administered and sold, and the proceeds of sale, after paying said lien in favor of said Robinson, distributed pro rata in payment of the debts proved against said bankrupt's estate, and for general relief.

323 That on October 3, 1870, an appearance was entered in said cause by said defendants.

That on March 6, 1871, a decree pro confesso was entered against said defendants.

That on April 7, 1871, the defendant John W. Scruggs filed his answer

to said bill admitting his bankruptcy and the appointment of said complainant as assignee of his estate, and the assignment and conveyance thereof to him as alleged, but denying all fraud alleged.

That on May 13, 1871, the defendant Narcissa Scruggs filed her answer to said bill, admitting the adjudication of said John W. Scruggs as a bankrupt, the appointment of said complainant as assignee of his estate, and the assignment and conveyance thereof to him as alleged, but denying all fraud in the execution of said conveyance, and setting up and pleading in bar of complainant's suit a decree of said chancery court of date December 7, 1867, ratifying said contract of said conveyance of date May 14, 1866, and divesting title of the property embraced in said conveyance out of said John W. Scruggs as an individual and vesting it in him as trustee of said Narcissa Scruggs.

That on May 15, 1871, said decree pro confesso against said defendants was by said district court set aside.

324 That on June 5, 1871, said complainant filed the general replication to each of said answers.

And that on November 24, 1871, the death of said John W. Scruggs was suggested, and by consent of defendants the hearing of the cause ordered to proceed against said Narcissa Scruggs, and a final decree was made and pronounced in said cause by said district court dismissing complainant's bill.

Wherefore this appellant appeals from the whole of said decree of said district court of the United States, and respectfully prays that the decree of the said district court, and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear said cause anew, and that the said decree of said district court, and every part thereof, may be reversed, and such other decree made as to said Supreme Court shall seem just.

Dated November 10th, 1873.

F. P. WARD,
Solicitor and Counsel for Appellant.

The above petition granted and the appeal prayed for allowed November 10, 1873.

JOSEPH P. BRADLEY,
Associate Justice of Sup. Ct. U. S.

Filed at my office Novr. 13th, 1873.

LIONEL W. DAY,
Clk. D. C. Nor. Dist. of Ala.

325 (Indorsed:) Milton Humes, assignee of John W. Scruggs, bankpt., vs. Narcissa Scruggs and James Robinson.

Appeal.

Executed by exhibiting this original appeal and delivering a copy thereof to the appellee, Narcissa Scruggs, in Huntsville, Alabama, on the 17th day of November, A. D. 1873; also by exhibiting original and delivering a copy thereof to James Robinson in Huntsville, Alabama, on the 19th day of Nov., A. D. 1873.

Z. E. THOMAS,
U. S. Marshal Northn. Dist. of Ala.

326 By the honorable Joseph P. Bradley, one of the justices of the Supreme Court of the United States.

To Narcissa Scruggs and James Robinson:

Whereas Milton Humes, assignee of John W. Scruggs, bankrupt, has lately appealed to the Supreme Court of the United States from a decree rendered in the district court of the United States for the northern district of Alabama, on November 24, 1871, made in your favor, and said appellant has filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Washington, in the District of Columbia, the 10th day of November, A. D. 1873.

JOSEPH P. BRADLEY,
Assistant Justice of the Supreme Court U. S.

327 (Indorsed:) Milton Humes, assignee of John W. Scruggs, bankrupt, vs. Narcissa Scruggs and James Robinson. Citation. Filed Nov. 13th, 1873. Lionel W. Day, clk. D. C. U. S.

Executed by exhibiting this original citation and delivering a copy thereof to the appellee, Narcissa Scruggs, in Huntsville, Alabama, on the 17th day of Nov., A. D. 1873; also by exhibiting original and delivering a copy thereof to James Robinson, in Huntsville, Alabama, on the 19th day of Nov., A. D. 1873.

Z. E. THOMAS,
U. S. Marshal Northern Dist. of Ala.

328 UNITED STATES OF AMERICA,
Northern District of Alabama:

I, Lionel W. Day, clerk of the district court of the United States for the northern district of Alabama, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office, viz, the bill, process, return of service, decree pro confesso, order setting the same aside, answer, replications, agreement of submission, depositions, evidence, decree, and other proceedings in the cause and appeal-bond, together with the original petition, allowance, and citation of appeal, with return of service thereon by the United States marshal of this district.

In testimony whereof I have caused the seal of said court to be hereunto affixed at the city of Huntsville, in the northern district of Alabama, this 17th day of June, A. D. 1874.

[SEAL.]

LIONEL W. DAY,
Clk. D. C. U. S. Nor. Dist. of Alabama.

(Indorsement on cover:) No. 146. Milton Humes, assignee of John W. Scruggs, a bankrupt, appellant, vs. Narcissa Scruggs and James Robinson. N. Alabama, D. C. U. S. Filed 15th October, 1874.

Supreme Court of the United States.

MILTON HUMES,

ASSIGNEE OF JOHN W. SCRUGGS, BANKRUPT, APPELLANT,

VS.

NARCISSA SCRUGGS AND JAMES ROBINSON,

APPELLEES.

APPELLANT'S BRIEF.

HUNTSVILLE, ALA.:
PRINTED AT THE HUNTSVILLE INDEPENDENT JOB OFFICE.
1875.

Supreme Court of the United States.

MILTON HUMES,

ASSIGNEE OF JOHN W. SCRUGGS, BANKRUPT, APPELLANT,

VS.

NARCISSA SCRUGGS AND JAMES ROBINSON,

APPELLEES.

APPELLANT'S BRIEF.

HUNTSVILLE, ALA.:
PRINTED AT THE HUNTSVILLE INDEPENDENT JOB OFFICE.
1875.

Supreme Court of the United States.

MILTON HUMES,
Assignee of John W. Scruggs, Bankrupt, Appellant,
vs.
NARCISSA SCRUGGS AND JAMES ROBINSON,
Appellees.

APPELLANT'S BRIEF.

ABSTRACT OF THE PLEADINGS.

The bill of appellant, filed in the District Court of the United States for the Northern District of Alabama on August 11, 1870, alleges, viz:

Paragraph 1. The adjudication of John W. Scruggs as a Bankrupt on June 3, 1868; the appointment of Charles A. Donegan as assignee of his estate on August 13, 1868; and the assignment and conveyance of the same to him on September 4, 1868; the death of said Donegan on May 29, 1870, without having administered the assets of said estate, or disposed of his right to the property in controversy; and the appointment of appellant

as the successor of said Donegan, as assignee of said estate, with the assignment and conveyance to him of all the property thereof not disposed of by said Donegan.

Paragraph 2. The indebtedness of said Bankrupt on May 14, 1866, to the defendant, Robinson, in a sum exceeding thirteen thousand dollars; to certain other creditors in sums amounting to over one hundred and sixty thousand dollars; and to other persons in large sums, amounting, in the aggregate, to over three hundred thousand dollars.

Paragraph 3. That on May 14, 1866, said Bankrupt was seized and possessed of the property in controversy, viz: a tract of land on which he resided, certain household and kitchen furniture, and a one-third interest in the profits of a hotel in Corinth, Mississippi, for a term of five years from August 22, 1865.

Paragraph 4. That said Bankrupt, with the intent to hinder, delay and defraud his creditors, conveyed said property to his wife, the defendant, Narcissa Scruggs, by his deed of that date, May 14, 1866; that said deed was contrary to and prohibited by the laws of the State; that the property conveyed was worth fifty thousand dollars; that the land conveyed was purchased by him for his own use, paid for with his own money, and the title thereof taken in his own name; and that he had made permanent improvements thereon with his own means, to the value of twenty-five thousand dollars.

Paragraph 5. That said Bankrupt conveyed all the property he then had to his wife, and was at the time insolvent.

Paragraph 6. That the consideration recited in said deed was simulated and false; that the debts recited as existing against said Bankrupt on May 14, 1866, except said indebtedness to the defendant James Robinson, had been proved against his estate in Bankruptcy, and could not be satisfied without subjecting the property in controversy to the payment thereof.

Paragraph 7. That the defendant Robinson, on December 13, 1867, filed his bill in the Chancery Court of the State to have said deed set aside as fraudulent, and the property embraced therein subjected to the payment of his said debt; and after the Bankruptcy of said John W. Scruggs, on August 3, 1870, filed his supplemental bill in said Chancery Court against your orator and the defendants to his original bill, praying for the same relief against your orator as he would have been entitled to against the said John W. Scruggs, had he not become Bankrupt, thereby acquiring a lien on the property for the payment of his debt.

Paragraph 8. That said Bankrupt and his wife were married in the State of Alabama in December, 1843, where they have resided ever since, without any contract or marriage settlement varying their marital rights from the provisions of the law of the State.

Said bill prays that said deed of said Bankrupt to his wife may be set aside and declared null and void; that an account may be taken of what is due said Robinson on his said debt, and a lien established on the property for the payment of it; and that the property embraced in the deed may be decreed to be assets of said estate, and surrendered to appellant's possession, to be administered and sold, and the proceeds of sale, after payment of the lien in favor of said Robinson, distributed *pro rata* in payment of the debts proved against said estate in Bankruptcy.

Service of process in this cause was had on the defendants as follows, viz: on the defendant Robinson August 23, 1870; on the defendant John W. Scruggs, August 30, 1870; and on the defendant Narcissa Scruggs, September 3, 1870.

A decree *pro confesso* was entered against all the defendants on March 6, 1871.

On May 15, 1871, the decree *pro confesso* was set aside.

On April 27, 1871, the defendant, John W. Scruggs, filed his answer, admitting the allegations of paragraphs 1, 2 and 3, of the bill, admitting the conveyance of the property to his wife, but denying any fraudulent intent in the execution of it, or that the property was worth $50,000; and averring that the land conveyed, with sixty acres sold off, was purchased by him at $3,250, paid for

with money belonging to his wife's separate estate. He denies that the costs of the improvements made by him exceeded $18,000, and avers that $4,400 of this belonged to the separate estate of his wife, and $2,400 was realized from the sale of the sixty acres to Martin *et al.*

5. He admits that he was insolvent at the date of his conveyance, but avers that he then owned much other property not embraced therein.

6. He denies that the consideration recited was simulated and false, or that the conveyance was executed without any consideration valid in law, and admits that his assets are wholly insufficient to pay the debts proved against his estate in Bankruptcy.

7. He admits the allegation of paragraph 7, but denies that Robinson acquired any lien.

8. He admits the allegations of paragraph 8.

On May 13, 1871, the defendant, Narcissa Scruggs, filed her answer—

1. Admitting the allegations of paragraph 1.

2. Denying the allegations of paragraph 2.

3. Admitting the allegations of paragraph 3.

4. Admitting the conveyance; denying that it was fraudulent, that it was prohibited by the laws of the State, that the property was worth $50,000; and averring that the land conveyed was purchased for her, paid for with her money, and improved to not over $18,000 of which $4,400 belonged to her separate estate, and $2,400 realized from the sale of a portion of the land to Samuel Clark.

5. Denying the allegations of paragraph 5.

6. Denying the allegations of paragraph 6.

7. Admitting the allegations of paragraph 7, but denying that Robinson acquired any lien.

8. Admitting the allegations of paragraph 8, and pleading a decree of said Chancery Court rendered at the December Term, 1867, in the cause of herself, by her next friend James H. Scruggs, against her said husband.

On June 5, 1871, appellant filed the general replication to each of said answers.

On November 24, 1871, the parties filed their written submission of the cause for decree.

Decree dismissing complainant's bill was rendered November 24, 1871. And appeal allowed November 10, 1873.

ABSTRACT OF TESTIMONY FOR APPELLANT.

DEPOSITION OF FRANCIS A. SANDERS.

Witness is the grantee in the conveyance of John W. Scruggs and wife, Narcissa Scruggs, of date May 14, 1866. The lands in Crittenden County, Arkansas, comprising the plantation known as the Island place, had been previously conveyed to witness by Oliver P. Lyle, as attorney in fact of John W. Scruggs. Witness realized nothing as trustee under the conveyance of Scruggs and wife. The lands were under his control from the date of the conveyance to the sale under decree of the Chancery Court of Crittenden County, Arkansas. He suffered Scruggs to rent out the place and use the proceeds. The attachments under which the lands were sold were levied before May 14, 1866.

Scruggs and wife were married in Alabama prior to 1848, and continuously resided there afterwards. Subsequently to 1850 Scruggs received for his wife, from William Weakley's estate, about $3,300. He was informed by Scruggs that this money was appropriated to the purchase of lands known as the race track property, of which the property in litigation in this suit is a part. Scruggs also received some money for her from her father, who died in October, 1863. Scruggs died in August, 1871. He paid

about $3,300 for the race track. The Island place could have been sold in 1866 for forty thousand dollars. Scruggs was about fifty-three years old at his death, and had been suffering for several years with chronic diarrhœa, of which he died. His wife is about forty-seven years of age, and was in vigorous health at the date of their conveyance on May 14, 1866. Scruggs sold off a part of the race track property to James H. Scruggs, Samuel Clark and Joseph Martin.

DEPOSITION OF JAMES J. DONEGAN.

On May 14, 1866, John W. Scruggs was indebted to the Northern Bank of Alabama, as principal, in the sum of $34,883.08, and as endorser, in the further sum of $46,619.30. The real estate conveyed by Scruggs to his wife on that day was worth $20,000 or $25,000.

In 1866 witness purchased the Island place, in Crittenden County, Arkansas, conveyed by Scruggs and wife to Sanders, trustee, for $17,092.67. This sum included his bid at public sale, and all liens on the land paid off by him. Witness heard many persons speak of the land as worth $50,000, one of whom he considered as one of the best judges of land in the country.

Scruggs received for his wife, from the estate of her uncle, William Weakley, who died in 1853, about $2,800 or $3,000.

DEPOSITION OF A. S. FLETCHER.

On May 14, 1866, Scruggs was indebted to the estate of Richard Holding by two bonds, one for $1,755, due July 15, 1855, credited with $800, the other for $5,400, with interest from February 28, 1862; and to William M. Holding, by bond for $5,775.22, dated December 20, 1858, subject to credits amounting, on August 7, 1861, to $867.

The real estate conveyed by Scruggs to his wife was worth about $25,006, but the witness does not think it would have sold for that in cash. His wife is a distributee of the estate of Richard Holding, deceased.

DEPOSITION OF HUGH N. MOORE.

The property conveyed by Scruggs to his wife was worth $25,000, but could not then have been sold for $20,000 in cash.

DEPOSITION OF WILLIAM W. GARTH.

Scruggs at said date, May 14, 1866, was indebted to Jesse W. Garth, father of witness, in the sum of $4,900, with interest from February 25, 1861. The property conveyed by Scruggs to his wife was worth $18,000 or $20,000. Witness is executor of Jesse W. Garth.

DEPOSITION OF OLIVER P. LYLES.

On February 7, 1866, witness, under a power of attorney from Scruggs, of date February 6, 1866, conveyed the Island place to Francis A. Sanders.

DEPOSITION OF MILTON HUMES.

Witness became attorney for the firm of Sheffey, Scruggs & Martin in the latter part of 1867. It was then insolvent. Its assets consisted of land in Huntsville worth $7,000, and wild lands in Arkansas subject to overflow and worthless.

The nominal assets of Scruggs, Donegan & Co. were over $400,000; the nominal assets of John W. Scruggs, individually, about $40,000; and the nominal assets of Scruggs, Drake & Co. about $40,000.

DEPOSITION OF CASWELL B. DERRICK.

On November 26, 1860, Scruggs and wife conveyed a tract of land in Jackson County, Alabama, to him for seven thousand dollars, then paid by him. This was the only land he ever bought of Scruggs. He had no knowledge or information of Scruggs' wife relinquishing dower in the land otherwise than by joining her husband in the execution of the conveyance on November 26, 1860.

DEPOSITION OF JAMES H. SCRUGGS.

Scruggs and wife acknowledged the execution of their conveyance to Derrick, before witness, as Probate Judge of Madison County, Alabama, on November 26, 1860. The property in Madison County, Alabama, conveyed by Scruggs to his wife in May, 1866, has yielded no income, but been an expense.

Witness was a brother of John W. Scruggs. The race track

property purchased of Ragland was paid for with the money of defendant, Narcissa Scruggs, received from the estate of her uncle William Weakley. Title was taken to Scruggs, instead of Scruggs' wife, at the suggestion of witness, to give him credit in a commission business he was about to open in Charleston, S. C. The Arkansas property conveyed by Scruggs and wife to Sanders was worth $75,000. Scruggs' health was feeble from chronic diarrhœa, of which he has since died. His wife was in good health.

After May, 1866, witness, as agent for an insurance company, insured the life of said John W. Scruggs for $10,000.

Witness' impression is that the money for the race track was paid to Ragland by James J. Donegan, but he cannot state positively. He never saw the money paid, but he knows that his brother had no other means with which to pay for the race track. After the purchase, and prior to 1860, he very often heard Scruggs say that his wife's money paid for the race track.

AGREEMENT OF SUBMISSION.

The deposition of Thomas M. Peters proved that the only land he ever bought of John W. Scruggs was partnership property of the firm of Scruggs, Donegan & Co., and that he never paid for it, nor received a conveyance of, nor relinquishment of dower in, it.

Transcript from the records of the Probate Court of Crittenden County, Arkansas, of deed of conveyance by Oliver P. Lyles, attorney in fact for John W. Scruggs, to Francis A. Sanders, of the Island place, of date February 7, 1866.

Transcript from records of the Circuit Court of Crittenden County, Arkansas, of attachment suits against John W. Scruggs, under which the Island Place was sold to James J. Donegan for three thousand dollars.

Transcript from records of the Chancery Court of Alcorn County, Mississippi, of conveyance by John W. Scruggs to his wife of his interest in the Corinth Hotel, of date May 1, 1867, for $25,000.

Transcript from the records of the Probate Court of Madison County, Alabama, of the appointment of the administrator of Samuel Ragland August 18, 1852.

Transcript from records of the Probate Court of Lauderdale County, Alabama, of the final settlement of the estate of William Weakley, showing Narcissa Scruggs' distributive share thereof to be twenty-seven hundred and fifty dollars.

Transcript from records of the District Court of the United States for the Northern District of Alabama, of the list of debts proved against the estate of John W. Scruggs in Bankruptcy, amounting to one hundred and ninety thousand dollars.

ABSTRACT OF TESTIMONY FOR DEFENDANTS.

Deed of conveyance from Scruggs to his wife of May 14, 1866, reciting as the consideration his receipt of $3,200 of her statutory separate estate in 1852, the sale by him of other property of her separate estate in 1855 for $1,300, and her relinquishment of dower conveyed by him to Caswell B. Derrick, Francis A. Sanders and Thomas M. Peters.

Decree of the Chancery Court of Madison County, Alabama, ratifying said conveyance of Scruggs to his wife, and divesting the title of the property embraced out of him individually, and vesting it in him as trustee of his wife, rendered on December 7, 1867, in the cause of Narcissa Scruggs, by her next friend Lawrence H. Scruggs, against John W. Scruggs, wherein she alledged her marriage with John W. Scruggs in 1843, his conveyance of land of hers (she joining in the deed) for $3,600 in 1852, his receipt of $2,750, her share of her uncle William Weakley's estate, about 1854, his receipt of $1,500 for her from J. H. Jones, and $500 from George Cox about 1853; that these sums were used by him in his

general business, and became blended with his individual capital; his purchase of the race track property from Samuel Ragland in 1850, her joining him in a conveyance of 6 92-100 acres of it to Joseph Martin for $3,300, a portion to James H. Scruggs for $7,600, and a portion to Samuel Clark for $1,700, the payment for the land with her share of William Weakley's estate, and title taken in her husband's name because he was wealthy and prosperous, her relinquishment of dower in lands conveyed to F. A. Sanders, C. B. Derrick and Thomas M. Peters, in consideration of which his conveyance to her of May 14, 1866, was executed, and prays that the conveyance may be ratified and confirmed, and title of the land vested in him, as trustee, for her sole and separate use.

A decree of said Chancery Court in the cause of Henry C. Jones *et als vs.* Samuel S. Clark *et al*, for the sale of the portion of the race track sold by Scruggs to Clark, for the payment of complainant's debts, subject to Scruggs' vendor's lien for the purchase money.

DEPOSITION OF DEFENDANT, NARCISSA SCRUGGS.

She intermarried with John W. Scruggs in Huntsville, Ala., in 1843, where they continued to reside afterwards. Between 1852 and 1855 her husband received about $3,100 as her share of Wm. Weakley's estate, who died between 1851 and 1853. He used this in payment for the race track property, of which the land in controversy is a part. It was purchased in 1850. Between 1850 and 1853 he received $2,300 or $2,400 from sale of land of hers in Mississippi. He received $1,200 or $1,500 for a carriage of hers. And after 1855 he received $400 or $500 for her from George Coxe. She relinquished dower as recited in the conveyance to her upon an agreement that the conveyance should be executed. Her husband's health was feeble. There was no fraudulent intent in accepting the conveyance, nor had she any knowledge of any such intent on his part in executing it. She did not know that he was insolvent. The considerations are correctly recited in the conveyance. She acquired no property since the conveyance, except the reversionary interest in the Corinth Hotel. She has derived no income from the real estate in Alabama embraced in

the conveyance. Copies of the conveyances, from her husband to her of the reversionary interest in the Corinth Hotel, marked "N. S.," from Samuel Ragland to John W. Scruggs, marked "R.," and from Scruggs and wife to Sanders, marked "S.," are filed.

DEPOSITION OF MARTHA ANN SPOTSWOOD.

She is the niece of John W. Scruggs, and lived with him and his wife more than twelve months in 1851 and 1852. This was after the purchase of the race track property, and while they resided on it. During this time she heard him say that he had received $3,000 or $3,100 for his wife from William Weakley's estate, and paid it for the race track property; that he had sold a carriage of hers for not less than $1,000; and that he had received about $2,300 for land of hers in Mississippi. After the close of the war she heard his wife tell him that he ought to have taken title of the property in her name, to which he replied that it would have injured his credit, and that he always thought he would be able to make provision for his family.

DEPOSITION OF S. S. DARWIN.

He estimates the value of the real estate in controversy at $10,000.

DEPOSITION OF MILLS JENKINS.

He values the Island plantation, in Crittenden County, Arkansas, at $40 per acre.

DEPOSITION OF Z. P. DAVIS.

He proves Mrs. Scruggs relinquishment of dower to T. M. Peters.

DEPOSITION OF JOSEPH MARTIN.

He bought eleven acres of the race track from Scruggs at $300 per acre. He was a member of the firm of Sheffey, Scruggs & Martin. He made over his interest in the partnership property to Mrs. Sheffey, widow of his deceased partner, in consideration of

her undertaking to discharge the debts. Of the partnership lands, three-fourths of an acre was improved, and the balance unimproved. The improved lot was sold under a decree of the Chancery Court. He does not think it brought $5,000, nor does he know whether it brought $2,000 or not.

DEPOSITION OF WILLIAM DICKSON.

He valued the Island plantation in Arkansas at $50 per acre in 1860, and supposes it was worth as much in 1866.

DEPOSITION OF JOSEPH C. BRADLEY.

He heard Scruggs, while in possession of the race track property, say that he had received money for his wife from William Weakley's estate, and paid for the property with it. He heard Scruggs say that he had received other money for his wife, but does not remember the amount. He values the property in controversy at $10,000.

DEPOSITION OF THOMAS S. M'CALLEY.

He bought the race track property from Ragland in payment of a debt, and took Scruggs in as a partner. Scruggs moved on the property, and afterwards told him that his wife had $4,000 or $5,000 coming from William Weakley's estate, and wished to make a home of the property. Witness consented that Ragland should pay his debt and make the deed to Scruggs. Scruggs told him that he paid for the land with his wife's money. He values the real estate in controversy at $8,000 or $10,000.

DEPOSITION OF R. W. COLTART.

He estimates the value of the property in controversy in 1866 at $15,000.

DEPOSITION OF R. D. WILSON.

He proves Mrs. Scruggs' relinquishment of dower on May 14, 1866, to C. B. Derrick.

ASSIGNMENT OF ERRORS.

The District Court erred in dismissing complainant's bill.

It erred in decreeing on the pleadings without regard to the testimony.

It erred in not setting aside the conveyance of Scruggs to his wife as fraudulent.

And it erred in sustaining the conveyance beyond the amount of the actual consideration for its execution.

ARGUMENT.

The District Court, in decreeing on the pleadings without regard to the testimony in the cause, necessarily held the decree of the State Chancery Court, to which only Scruggs and his wife were partners, conclusive against the complainant.

This was erronious.

"A bill in equity, by which a *feme covert* asserts her marital rights against her husband, or seeks to have settled to her separate use, property which he has purchased with her separate funds, is not such a proceeding *in rem* as to make the decree therein rendered conclusive on all persons, but is only binding on the parties to it."

The Branch Bank at Montgomery vs. *Hodges, 12 Ala., 118.*
Citing The Mary, 9 Cranch, 144.

"The plaintiffs were not parties to this suit, and, consequently, are not bound by the decree."

Wright and Cook vs. *Stanard*, 2 *Brockenbrough*, 311, (313).

The decree in the State Chancery Court in favor of Mrs. Scruggs against her husband, is a nullity, because it was not a *bona fide* suit

Lord vs. *Veazie*, 8 *How. Res.*, 251.
Gains vs. *Hennen*, 24 *How. Res.*, 553, (628).
Revised Code of Alabama, *Sec.* 2374.
Code of 1852, *Sec.* 1985.

"Husband and wife cannot contract with each other for the sale of any property."

"It would seem that there can be no serious doubt that Section 1985 of the Code is prohibitory."

Reel vs. *Oxnall* et als, 39 *Ala.*, 138.

If the conveyance of Scruggs to his wife was not allowed by the laws of Alabama, the Chancery Court had no jurisdiction to give it validity.

If it was allowable, then Scruggs' voluntary performance of a duty that the Chancery Court would have compelled, was itself valid. And the decree of the Court superfluous and without jurisdiction.

Harris vs. *Brown*, 30 *Ala.*, 401.

No trust resulted to Mrs. Scruggs from the facts alleged in her bill against her husband.

The allegation that the land was paid for with her distributive share of William Weakley's estate, is inconsistent with the allegation that that and other sums of money belonging to her separate estate were used by him in his general business, and blended with his individual assets.

The property was purchased in 1850, and William Weakley died in 1853. If her share of his estate was received about 1854, and applied in payment of the property, this appropriation of her money to the payment of her husband's debt did not relate back to the purchase and raise a resulting trust.

The conveyance to Scruggs was made by Ragland's administrator pursuant to a purchase from Ragland. Ragland died in 1852, and William Weakley in 1853. So that the purchase could not have been made with her share of Weakley's estate.

Fraud in the execution of Scruggs' conveyance to his wife is evidenced

By recitals in the conveyance of considerations that did not exist, viz:

She relinquished her contingent right of dower in the lands sold by her husband to C. B. Derrick by joining him in a conveyance of it in 1860.

Revised Code of Ala., Sec.

The land sold to Thomas M. Peters was partnership land; the partnership was insolvent; and Peters never paid for the land, nor received any conveyance of title. Her relinquishment of dower in it was worthless.

All the lands embraced in their conveyance to Sanders, except the Island plantation, were wild lands belonging to insolvent partnerships. And the Island plantation had been previously conveyed by Scruggs' attorney in fact, Lyles, on February 7, 1866.

The conveyance of Scruggs and wife to Sanders of May 14, 1866, was therefore a mere contrivance to enable her to appear to relinquish dower and manufacture a consideration for the conveyance to her.

The use made of that deed corroborates this. The trustee permitted Scruggs to remain in possession, and appropriate the rents until the land was sold, under attachments, to Mrs. Scruggs' uncle, James J. Donegan, at three or four thousand dollars, who, by paying off all liens, acquired the property at about $17,000. The trustee made no effort to collect rents, redeem the land from attachment sales, or to appropriate Mrs. Scruggs' right of dower in the land to the creditors.

"The deeds describe debts which are not shown to be due; and the inference is proper that they were executed, not for the *bona fide* purpose of securing debts actually due to the complainant, but that making use of that indebtedness, and simulating it to be greatly

more than it was, the chief intention was to hinder and delay creditors."

Marriott & Hardesty et als vs. *Givins, 8 Ala., 694, (712)*

The consideration proved is inadequate to sustain the deed of Scruggs to his wife.

The average estimate of the value of the land in controversy is about $17,000. If the estimate of Bradley and McCalley are excluded, the average will be considerably greater.

Bradley, in his deposition, admits that, as witness in another cause, he estimated the fee simple in land at $7,500, and the contingent right of dower of the grantor's widow, who was over fifty-five years of age, at $3,000.

McCalley admits that he went into Bankruptcy; that before doing so he conveyed his residence to his wife's mother, who conveyed it to his wife; that the consideration for his conveyance was his indebtedness, by stated account, to his wife's mother; that these items of the stated account were her shares of their crops of cotton raised by them more than twenty years before; that each of these items were for exactly the same number of pounds of cotton, and at exactly the same price; and that he did not recollect whether or not, in his examination before the Register in Bankruptcy, he stated that said account was correct, but he had no book or memoranda from which said account was made out.

McCalley also testifies that he bought the property in controversy of Ragland in payment of a debt, and took Scruggs in as a partner! That Scruggs afterwards told him his wife had $4,000 or $5,000 coming to her from William Weakley's estate, and wished to make a home of the property; that he consented, Ragland paid him his debt, and he directed Ragland to make the deed to Scruggs.

Now Ragland died in 1852. See letters of administration on his estate. And Weakley did not die until May, 1853.

Donegan's dep., R., p. 73.
Mrs. Scruggs' bill, R., p. 157.

Excluding the estimate of these two witnesses, the average valuation of the property will be near $20,000. Add to this $25,000

as the value of the interest in the Corinth Hotel embraced in the deed to her of May 14, 1866.

On May 1, 1869, she accepts a conveyance of the reversion of the Corinth Hotel, from her husband to herself, in consideration of $25,000 paid by her. She had no property but that conveyed to her on May 14, 1866, and the Alabama part of that brought her no income. The $25,000 must necessarily have been derived from the interest in the lease of the hotel.

We have therefore about $45,000 paid by an insolvent husband to his wife in consideration of an indebtedness of less than $8,000, and her pretended relinquishment of a contingent right of dower in lands that sold for about $17,000.

When in Boyd *vs.* Dunlap, 1 John. Ch., 478, Chancellor Kent held a consideration of $1,110 insufficient to sustain a conveyance of property worth $1,700.

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